



भारत का राजपत्र

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सं. 41] नई दिल्ली, अक्टूबर 2—अक्टूबर 8, 2016, शनिवार/ आश्विन 10—आश्विन 16, 1938

No. 41] NEW DELHI, OCTOBER 2—OCTOBER 8, 2016, SATURDAY/ASVINA 10—ASVINA 16, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 4 अक्टूबर, 2016

का.आ. 2065.—माननीय वित्त मंत्री के अनुमोदन से, केन्द्रीय सरकार, एटद्वारा, ऋण वसूली अधिकरण (डीआरटी), दिल्ली के पीठासीन अधिकारी श्री जी.वी.के. राजू, जिनके पास बीआईएफआर के सदस्य का अतिरिक्त प्रभार भी है, को पदभार ग्रहण करने की तारीख से 31.12.2016 तक अथवा औद्योगिक एवं वित्तीय पुनर्निर्माण बोर्ड (बीआईएफआर) के समापन तक अथवा अगले आदेशों तक, जो भी पहले हो, बीआईएफआर के अध्यक्ष के रूप में कार्य करने के लिए प्राधिकृत करती है।

[फा. सं. 20(02)/2011- आईएफ-II (खंड-II)]

अतीश सिंह, निदेशक (आईएफ-II)

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 4th October, 2016

S.O. 2065.—With the approval of Hon'ble FM, the Central Government hereby authorize Shri G.V.K. Raju, Presiding Officer, Debts Recovery Tribunal (DRT), Delhi who is also holding the additional charge of Member, BIFR to act as Chairman, BIFR with effect from the date of assumption of the charge of the post till 31.12.2016 or till abolition of BIFR or until further orders, whichever is earlier.

[F. No. 20(02)/2011-IF II (Vol. II)]
ATEESH SINGH, Director (IF-II)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2066.—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए महाराष्ट्र में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा अपराधी राजेन्द्र सदाशिव निकलजे उर्फ छोटा राजन, उर्फ नाना, उर्फ सेठ के विरुद्ध 71 मुकदमों तथा संबंधित प्रासंगिक मामले जो कि महाराष्ट्र सरकार के गृह विभाग द्वारा जारी अधिसूचना संख्या टीईआर-1115/सी0आर0 363/विशेष 1बी दिनांकित 13.11.2015 व तदोपरांत भारत सरकार की अधिसूचना संख्या 228/56/2015-ए0वी0डी0-II दिनांकित 21.11.2015 के अंतर्गत अभियोजन का संचालन, अपील एवं पुनरीक्षण हेतु श्री प्रदीप दत्तात्रे घराट, अधिवक्ता को दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) के विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/11/2016-एवीडी-II]

प्रीति खन्ना, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 29th September, 2016

S.O. 2066.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Pradip Dattatray Gharat, Advocate as Special Public Prosecutor for conducting the prosecution, appeals and matters arising out of 71 (seventy one) Cases (against accused Rajendra Sadashiv Nikalje @ Chota Rajan @ Nana @ Seth transferred to Central Bureau of Investigation vide Govt. of Maharashtra, Home Department Notification No. TER.1115/C.R. 363/Spl.1B dated 13.11.2015 and subsequent Notification No. 228/56/2015-AVD-II dated 21.11.2015 issued by Govt. of India) Delhi Special Police Establishment Central Bureau of Investigation in the Maharashtra and other matters connected therewith or incidental thereto investigated or initiated by Mumbai Police/Maharashtra Police/Delhi Special Police Establishment (CBI) for a period of three years from the date of appointment or disposal of the cases entrusted to the counsel or any other/further orders whichever is earlier.

[F.No. 225/11/2016-AVD-II]

PREETI KHANNA, Under Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2067.—जबकि भारतीय आयुर्विज्ञान परिषद (संशोधन) अध्यादेश, 2013 की धारा 3क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 6 नवम्बर, 2013 को भारतीय आयुर्विज्ञान परिषद का पुनर्गठन किया गया था।

और जबकि भारतीय आयुर्विज्ञान अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खंड (ख) के अनुसरण में तथा संबंधित विश्वविद्यालयों/स्वास्थ्य विज्ञान विश्वविद्यालयों द्वारा सूचित अनुसार केंद्रीय सरकार निम्नलिखित को भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप में इस अधिसूचना के जारी होने से पांच वर्ष की अवधि के लिए नामित करती है।

अब, इसलिए, उपर्युक्त अधिनियम की धारा 3 की उप-धारा (1) के प्रावधान के अनुसरण में केंद्र सरकार एतद्वारा भारत सरकार तत्कालीन स्वास्थ्य मंत्रालय के दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ.138 में निम्न संशोधन करती है, नामतः

स्वास्थ्य एवं परिवार कल्याण मंत्रालय, भारत सरकार की दिनांक 6 नवम्बर, 2013 की का.आ. 3325 (अ) की अधिसूचना तथा इसमें किए गए संशोधनों में अंतिम प्रविष्टि के बाद तथा इससे संबंधित प्रविष्टि में निम्नलिखित को शामिल किया जाए, नामतः

क्र.सं.	विश्वविद्यालय का नाम	नामित सदस्य का विवरण	चयन प्रक्रिया
47.	पेसिफिक आयुर्विज्ञान विश्वविद्यालय, उदयपुर	डॉ. डी.पी. अग्रवाल, अध्यक्ष (उप-कुलपति), पेसिफिक आयुर्विज्ञान विश्वविद्यालय, उदयपुर	सीनेट द्वारा सर्वसम्मति से निर्वाचित

[सं. वी-11013/02/2015-एमईपी]

अमित विस्वास, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 30th September, 2016

S.O. 2067 .—Whereas on 06th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And, whereas the Central Government, in pursuance of Clause (b) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and as informed by the respective universities/health sciences universities, the following has been elected to be a member of the Medical Council of India for five years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated 9th January, 1960, namely:-

In the notification of the Government of India in the Ministry of Health and Family Welfare number S.O. 3325(E) dated 06th November, 2013 and amendments thereto, after the last entry and entry relating thereto, the following shall be inserted, namely:

S. No.	Name of the University	Details of the Elected Member	Mode of Election
47.	Pacific Medical University, Udaipur	Dr. D.P. Agarwal, President (Vice-Chancellor), Pacific Medical University, Udaipur.	Elected unanimously by Senate.

[No. V-11013/02/2015-MEP]

AMIT BISWAS, Under Secy.

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2068.—जबकि भारतीय आयुर्विज्ञान परिषद (संशोधन) अध्यादेश, 2013 की धारा 3क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 6 नवम्बर, 2013 को भारतीय आयुर्विज्ञान परिषद का पुनर्गठन किया गया था।

और जबकि भारतीय आयुर्विज्ञान अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1) के खंड (क) के अनुसरण में तथा संबंधित राज्य सरकार के परामर्श से केंद्रीय सरकार निम्नलिखित को पांच वर्ष तक की अवधि के लिए भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप नामित करती है जो कि इस अधिसूचना के जारी होने की तिथि से प्रभावी होगा।

अब, इसलिए, उपर्युक्त अधिनियम की धारा 3 की उप-धारा (1) के प्रावधान के अनुसरण में केंद्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय के दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ.138 में निम्न संशोधन करती है, नामतः

स्वास्थ्य एवं परिवार कल्याण मंत्रालय, भारत सरकार की दिनांक 6 नवम्बर, 2013 की का.आ. 3323 (अ) की अधिसूचना तथा इसमें किए गए संशोधनों में अंतिम प्रविष्टि के बाद तथा इससे संबंधित प्रविष्टि में निम्नलिखित को शामिल किया जाए, नामतः

क्र.सं.	राज्य सरकार का नाम	नामित सदस्य का विवरण
28.	तेलंगाना	डॉ. कम्पा शंकर, प्रोफेसर, जनरल मेडिसिन एवं अधीक्षक, सर रोनाल्ड रोस इंस्टीट्यूट ऑफ ट्रॉपिकल एंड कम्यूनिकेबल डिजीजिस, नालकुंटा, हैदराबाद

[सं. वी-11013/02/2014-एमईपी]

अमित बिस्वास, अवर सचिव

New Delhi, the 30th September, 2016

S.O. 2068.—Whereas on 6th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And whereas the Central Government, in pursuance of clause (a) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the respective State Government has nominated the following to be a member of the Medical Council of India for a period of five years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub section (1) of Section 3 of the said Act the Central Government hereby makes the following amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated the 9th January, 1960, namely;

In the notification of the Government of India in the Ministry of Health and Family Welfare number S.O. 3323(E) dated 06th November, 2013 and amendments thereto, after the last entry and entry relating thereto, the following shall be inserted, namely:

S. No.	Name of the State Government	Details of the Nominated Member
28.	Telangana	Dr. Kampa Shankar, Professor, General Medicine & Superintendent, Sir Ronald Ross Institute of Tropical & Communicable Diseases, Nallkunta, Hyderabad.

[No. V-11013/02/2014-MEP]

AMIT BISWAS, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2069.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 अक्टूबर, 2016 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध असम राज्य के बरपेटा जिले के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

राज्य	जिला	क्षेत्र
असम	बरपेटा	1. बरपेटा टाउन (नगरपालिका बोर्ड)
		2. बरपेटा रोड (नगरपालिका बोर्ड)
		3. हॉवली (टाउन कमिटी)
		4. पाठशाला (टाउन कमिटी)

[सं. एस-38013/39/2016-एस.एस.-I]

अजय मलिक, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 29th September, 2016

S.O. 2069.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st October, 2016 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas (including already implemented areas) in the State of Assam namely :—

State	District	Areas
Assam	Barpeta	i. Barpeta Town (Municipal Board)
		ii. Barpeta Road (Municipal Board)
		iii. Howly (Town Committee)
		iv. Pathsala (Town Committee)

[No. S-38013/39/2016-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2070.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स द यूरोनियम कार्पोरेशन ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 111/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-30025/3/2016-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2070.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2009) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. The Uranium Corporation of India Ltd. and their workman, which was received by the Central Government on 27.09.2016.

[No. L-30025/3/2016-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 29th day of August, 2016**INDUSTRIAL DISPUTE L.C. No. 111/2009****Between :**

Sri Shyam Karan Rai,
 S/o Shakal Deb Rai,
 R/o 1-189, AMD Quarters, Begumpet,
 Hyderabad

...Petitioner

AND

1. The Chairman & Managing Director,
 The Uranium Corporation of India Limited,
 (A Govt. of India Enterprise)
 Jadugude Mines, Singhbhum (East),
 Jharkhand – 832 101.
2. The Executive Director,
 The Uranium Corporation of India Limited,
 (A Govt. of India Enterprise)
 (An ISO-9002 & 14001 Company)
 Plot No.37, Road No.3, Sunrise Homes,
 Upparpally, P.O: Hyderguda, Hyderabad -500 048

...Respondents

Appearances:

For the Petitioner : Sri P. Phalgun Rao, Advocate

For the Respondent : M/s. K. Lakshman & M. Kiran Kumar,
 Advocates for R1 & R2**AWARD**

Sri Shyam Karan Rai, the Petitioner has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents. The Uranium Corporation of India Limited and it was registered in this Tribunal as LC No.111/2009 and notices were issued to the Respondents.

2. Petitioner filed the present case seeking for declaring the action on part of the Respondents in retrenching the Petitioner w.e.f. 22.6.2009 as illegal, improper, arbitrary and consequently direct the Respondents to take the workman back into the service as a Driver forthwith together with all back wages, continuity of service including the regularization of his services on par with regular employees along with all other attendant and consequential benefits.
3. The Respondent No.2 entered their appearance and filed the counter. At the same time Respondent No.2 filed an IA bearing No.36/2010 for impleading Sri P. Srinivas Reddy as Respondent No.3 which was allowed by this court and direction was given to the Petitioner to file an amended Petition impleading Sri P. Srinivas Reddy as Respondent No.3, but Petitioner failed to comply the order of the court and Respondent No.3 was not impleaded as a party.
4. While the matter stood thus, the Petitioner remained absent. Several opportunities have been given to the Petitioner for filing of amended petition, but the Petitioner failed to avail such opportunities which clearly indicates that the dispute between the parties has already been settled and the Petitioner has got nothing to raise any claim. Hence, 'No Dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 29th day of August, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2071.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हैवी इंजीनियरिंग कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 33/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-26011/18/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2071.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2015) of the Central Government Industrial Tribunal-cum-Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Heavy Engineering Corporation Ltd. and their workman, which was received by the Central Government on 27.09.2016.

[No. L-26011/18/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of Reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Ref. No. 33/2015

Employer in relation to the management of Heavy Engineering Corp. Ltd.

AND

Their workman

Present : Shri R. K. Saran, Presiding Officer**Appearances :**

For the Employers : None

For the workman : Shri D. Mukherjee, Advocate

State : Jharkhand Industry:-Steel

Dated 12/09/2016

AWARD

By order No. L-26011/18/2015-IR (M) dated 21/07/2015, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the extension of job training for one year in respect of Sri Harendra Prasad Machinist (Trainee) Shop-15/HMTP/HEC Ltd. by the management of M/s. Heavy Engineering Corporation Ltd. is legal/justified ? If not, then what relief the workman Sri Harendra Prasad is entitled to?”

2. The case is received from the Ministry of Labour on 07.08.2015. After receipt of reference, both Parties are noticed, the workman files their written statement on 07.09.2015. But the management neither appears subsequently nor files any written statement. And No witness examined by both side and no document marked as exhibit.

3. The case of the workman is that Sri Harendra Prasad was appointed as Machinist vide letter dated 22nd Oct., 2012. He was placed on the job training for two years. But after completion of two years training , he was to be absorbed in the regular employment in Grade- E. But he was not absorbed in the regular employment as Grade E workman, after completion of two years training successfully.

4. It is further submitted by the workman that he completed job training successfully and there was no allegation regarding any lapses or irregularly during training period but the management illegally and arbitrarily extended the period of job training for one year. Then the workman vehemently protested against the illegal extension order but without any effect. Accordingly he raised the Industrial disputes.

5. During preliminary hearing it is noticed that there is short point to be decided is as to whether extending the training period of one years of the workman by the management is fair and justified.

6. The workman is selected for a post and given training . During training it is seen that for maturity the period of the training of the workman is required . Hence there is no illegality to extend the training. Even during training the employer can eliminate the workman .

7. Considering the facts and circumstances of the case, I hold that the extension of job training for one year in respect of Sri Harendra Prasad Machinist (Trainee) Shop-15/HMTP/HEC Ltd. by the management of M/s. Heavy Engineering Corporation Ltd. is legal and justified , Therefore the management has not committed any error in extending the training . Hence no relief is granted to the workman.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2072.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बैलाडीला आयरन और प्रोजेक्ट (बीआईओपी) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 93/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-26012/39/1997-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2072.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 93/1998) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Baildila Iron Ore Project (BIOP) and their workman, which was received by the Central Government on 27.09.2016.

[No. L-26012/39/1997-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/93/1998

Secretary,
Samyukta Khadan Mazdoor Sangh,
PO Kirandul,

Distt. Baster, Kirandul (MP)

... Workman/Union

Versus

Executive Director,
BIOP Deposit No.14,
Kirandul, PO Kirandul,
Baster (MP)

...Management

AWARDPassed on this 17th day of August, 2016

1. As per letter dated 4-5-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-26012/39/97/IR(M). The dispute under reference relates to:

“Whether the action of the management of BIOP Deposit No.14, Kirandul for non-consideration of supervisor certificate in promoting Shri P.N. Singh, Master Electrician Grade I to the post of Junior Officer (Elect) is fair and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by SKMS Union at page 2/1 to 2/4. Case of Ist party Union is that claim of Ist party workman Shri P.N.Singh submitted supervisory certificate for promotion to management of Bailadila Iron Ore Project Deposit 14. Directives issued by Dy.Director of Mines, Safety, Electrical, Southern Zone Hyderabad in August 1987. It is provided any person holding supervisory certificate of competency supervisor under Rule 131 of IER 1956. In settlement dated 9-9-81, there is no categorization on different parts of different certificates. NMDC operating in different units like BIOP Deposit 14 given conditional and unconditional promotions to some workers. Said consideration was not extended to workman P.N.Singh though he was serving in the corporation from 1-4-66. Management of NMDC had promoted employees Bajpai and Mohanlal at Hyderabad Head office without even minimum prescribed electrical statutory certificate to the post of supervisor ignoring all the rules, qualifications. That settlement dated 7-7-89 before RL Hyderabad regarding promotion channel, para H is clear that workman who are on roles as on 30-10-71 the protection granted under the settlement of 30-10-71 for promotion shall continue to be applicable. On above ground, Union submits that Shri P.N.Singh be considered for promotion on supervisory certificate issued by him and benefit of promotion be given to him from the date of promotion given to his juniors.

3. 2nd party filed Written Statement at Page 7/1 to 7/4 opposing claim of Ist party. 2nd party submits that issue raised by Union is covered under Tripartite settlement dated 7-7-89 arrived between management of NMDC and its workmen. That SKMS Union is constituent member of All India NMDC Workers Federation and signatory to above said settlement. As per settlement dated 7-7-89, promotion from Master Electrician Grade I to post of Junior Officer (Electrical) a workman is required to possess the qualification and statutory licence, matric/ ITI, Electrical Supervisory Certificate. That since Bailadila iron Ore Project, Deposit 4 is located in MP, workman are required to obtain electrical statutory licences as prescribed in the MP Licensing Board(Electrical)Regulations 1960 or equivalent licences from other states. That Shri P.N.Singh Produced electrical supervisory certificate from Bilar Electrical Licencing Authority and the same is for working in installation/ equipments with less than 650 volts and doesnot meet the requirement for promotion to Junior Officer (Electrical) as it is not equivalent to the supervisory licence required. Workman was further required to pass the remaining parts covering installations/ equipments of more than 650 volt which will make this licence equivalent to the supervisory licence required. Workman was further required to pass additional supervisory certificate like AC apparatus not more than 650 volts, installation more than 650 volts, overhead ariel line more than 650 V, Underground cables, DC Apparatus not more than 650 V.

4. It is further contended that Shri P.N.Singh is aware about the statutory provision. He had applied for service certificate from management for the purpose of appearing in the examination/ test got getting qualified in supervisory competency examination conducted by MP Licencing Board (Electricity). Certificate was issued to him on 20-8-93. Shri P.N.Singh Master Electrician Grade I not produced prescribed electricity supervisory licence therefore he could not be promoted to the post of Junior Officer (Electrical). There is no merit in the dispute raised by him. Shri P.N.Singh had produced Supervisory Certificate of competency including additional parts required for supervisory certificate from Government of Bihar dated 22-4-99. Thereafter he was considered for promotion by management and Shri P.N.Singh was promoted to the post of Junior Officer from 26-7-99. The dispute doesnot exists. 2nd party prays that reference is answered in its favour.

5. Ist party Union submitted rejoinder reiterating its contentions in statement of claim. 2nd party submits that only remedy for the agony of Shri P.N.Singh is promoted with retrospective effect and payment of arrears.

6. 2nd party filed rejoinder at Page 9/1 to 9/5 reiterating its contentions in the Written Statement.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of BIOP Deposit No.14, Kirandul for non-consideration of supervisor certificate in promoting Shri P.N. Singh, Master Electrician Grade I to the post of Junior Officer (Elect) is fair and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. The terms of reference pertains to non-consideration of supervisory certificate for promotion to Shri P.N.Singh, Master Electrician Grade I to the post of Junior Office(Electrical). The dispute between parties is whether supervisory certificate issued by Bihar Government fulfills the requirement for promotion to the post of Junior Officer. Whether it is necessary to pass remaining parts of equipments more than 650 Volts as directed by 2nd party vide letter dated 6-11-92. Shri P.N.Singh (claimant) filed affidavit of his evidence stating that management not considered him for promotion to the post of Junior Officer extending possession of supervisory certificate. He further says that Rule 131 of Indian Electrical Rules 1956 Mines Act and as per settlement between Union and project, he is entitled for consideration for promotion. That settlement dated 30-10-71 grants protection for promotion. In his cross-examination, Shri P.N.Singh says he was working as Master Electrician Grade I in 1990, he retired from service 10 years back. He admitted settlement dated 7-7-89 and marked Exhibit M-1. He admits that for promotion to the post of Junior Officer (Electrical), person must hold ITI Certificate and Matric. That NMDC comes in Chhattisgarh after bifurcation of MP State. Certificate issued by licence controlled by electricity board that he had produced certificate issued by Bihar Electrical Licencing Authority. He admits said certificate is issued for installation for equipment less than 650 Volts capacity. He did not remember letter dated 6-11-92 issued by management informing him to produce certificate passing Higher Education. He submitted application to MP Licencing Authority but he was not granted certificate by such Board. He produced alternate certificate and as per said certificate, he was promoted on 20-7-99.

9. Management filed affidavit of witness Shri Josey Thomas supporting contentions in Written Statement filed by management. Workman was required to pass added certificate of AC apparatus not more than 650 volts, installation more than 650 volts, overhead ariel line more than 650 V, Underground cables, DC Apparatus not more than 650 V. after Shri P.N.Singh produced supervisory certificate obtained from Government of Bihar dated 22-4-99, he was considered for promotion. The promotion was granted to Shri P.N.Singh on 26-7-99. In his cross-examination, management's witness says since 2009, he is posted at Kirandul Project. Settlement in the matter of promotion, junior officers was settled in 1991. Ist party workman was promoted as Junior Officer on 27-7-99. The evidence adduced by both parties co-relates to the settlement. Exhibit M-1 is copy of settlement dated 7-7-89.

Para-3 of the settlement provides- in future departmental tests for promotion to Junior Officer level shall be conducted at N 10 level. Eligibility for appearing in the test shall be on completion of a minimum of three years of service in the regular grade of N-10. Those who have passed departmental test will be considered for promotion to JO along with departmental test passed Sr. Assistant Gr.I in N 10 level with common seniority at N 10 level.

Para 4(d)(1) deals with filling up of post of Junior Officer in Mechanical and Electrical Disciplines (1) 50 % of vacant posts in the grade of JO shall be filled in my promotion etc.. on the following conditions-

- (i) The candidates should possess minimum qualification of matric passed or ITI passed (proviso of the protection available under agreement of 30-10-71 shall continue) and pass the prescribed test at N10 level for this purpose.
- (ii) Wherever statutory qualifications are prescribed, these shall be fulfilled. However those at N 10 level who possess the statutory qualifications need not appear for the departmental test;

Above clause also doesnot provide that supervisory certificate should be w.r.t. the instructions above 650 Volts.

10. Copy of supervisory certificate produced by Shri P.N. Singh is at Page 10/32 issued by Bihar Licencing Board. On the point of required qualification, Shri A.K.Shashi point out my attention to clause 3(2)(2) of Indian Electricity Rules 1956. Clause 2 defines-

Voltage means (av) voltage means the difference of electric potential measured in volts between any two conductors or between any part of either conductor and the earth as measured by a suitable voltmeter and is said to be low where the voltage doesnot exceed 250 volts under normal conditions subject however to the percentage variation allowed by these rules, medium where the voltage doesnot exceed 650 volts under normal conditions subject however to the percentage variation allowed by these rules. High where the voltage doesnot exceed 33000 volts under normal conditions subject, however to the percentage variation by these rules extra high where the voltage exceeds 33000 volts under normal conditions subject, however to the percentage variation allowed by these rules.

The above definition clause doesnot provide the qualification required for promotion of Junior Officer Electrical Worker who possess supervisory certificate more than 650 volts. Argument advanced by Shri A.K.Shashi on the point cannot be accepted. Workman has produced supervisory certificate by Bihar Government. The supervisory certificates from other states would be considered as per letter dated 20-8-87 produced at Page 2/5.

Para 1 of said letter reads-

Any person holding supervisory certificate of competency issued by any State such as UP, Bihar, Karnataka etc. are eligible to work as electrical supervisory under Rule 131 of IER 56 at your mine.

It clearly supports the claim for promotion of Shri P.N.Singh to post of Junior Officer Electrical. The denial of promotion to him existed to submit supervisory certificates w.r.t. instruments 650 volts is contrary to above letter and illegal. For above reasons, I record my finding in point No.1 in Negative.

11. Point No.2- Evidence of Shri P.N.Singh shows that he has retired 10 years back. He was granted promotion on 27-7-99 after he produced supervisory certificate on 24-7-99. He was denied promotion on the ground that he had not produced certificate for AC apparatur, installation etc. 650 volts. The denial of promotion on said ground is illegal. Considering the circumstances, Shri P.N.Singh be considered for promotion in the post of Junior Officer Electrical from the date other employees were granted promotion and he was denied promotion for the ground that he had not produced supervisory certificates for apparatus more than 650 volts. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The 2nd party is directed to consider Shri P.N.Singh for promotion to the post of Junior Officer Electrical on the basis of supervisory certificate dated 7-3-91 produced by him issued by Bihar Licencing Board.
- (2) Monetary benefits accrued to him be paid within 30 days from the date of notification of award.

In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2073.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स न्यू इंडिया एश्योरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 54/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-17012/16/2006-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2073.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2006) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. New India Assurance Company Ltd. and their workman, which was received by the Central Government on 27.09.2016.

[No. L-17012/16/2006-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/54/06**

Shri Ram Das Sunmoriya,
S/o Late Shri Gouri Shankar Sunmouriya 10,
Poonam Residency, E-7/64, Arera Colony,
Bhopal

...Workman

Versus

Regional Manager,
New India Assurance Company Ltd.,
Regional Office, Paryawas Bhawan,
Block No.3, IInd Floor,
Bhopal

...Management

AWARD

Passed on this 11th day of August, 2016

1. As per letter dated 4-9-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/16/2006-IR(M). The dispute under reference relates to:

“Whether the action of the management of Regional Manager, New India Assurance Co.Ltd. Bhopal in superannuating Shri Ram Das Sunmoriya w.e.f. 31-7-03 considering his date of birth as 12-7-43 instead of 12-7-48 as claimed by the workman is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/6. Case of Ist party is that he was appointed as typist on 9-4-79 and posted at Ratlam branch. He was confirmed in service on 30-10-79. His date of birth is 12-7-48. That he had born at Sagar. The birth certificate issued by Cantonment Board reflects date of birth 12-12-1948. That he was promoted as Sr. Assistant in 1986. In 1989, he was promoted as Assistant Administrative Officer. In 1996, he was promoted as A.O. he continued to work on said post till his retirement. Ist party workman submits that he was prematurely retired on 31-7-00 without giving opportunity of hearing. Ist party workman further contends that his correct date of birth was 10-12-1948. The date of birth 12-7-48 recorded in school certificate is also incorrect. Ist party workman reiterates that he was retired without considering his correct date of birth 2-7-48. On such ground, Ist party prays for setting aside order of his premature retirement dated 31-7-03 and submits that his date of birth be corrected as 10-12-48.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that dispute raised by Ist party workman challenging his superannuation from 31-7-03 claiming that his correct date of birth is 12-7-48 and not 12-7-43. That workman had filed Civil Suit 337A/86 before Civil Judge Class II Mhow Indore against the authorities. Civil suit was dismissed on 3-5-90. Ist party workman was promoted to Class I Officer cadre on 18-9-89. He is not covered as workman under Section 2(s) of ID Act. Ist party workman had submitted application to the management declaring his date of birth was 12-7-48. Accordingly his date of birth was recorded. The complaint was received from Mr. Arun Sharma that Ist party workman has given his false date of birth reducing his age from 8 to 10 years. Cognizance of said complaint was taken the report was taken. The report was called from authority of Government High School Mhow. School Administration sent information that the date of birth of workman was 12-7-43 as per record of admission. Workman had submitted application dated 29-11-63 for change of his date of birth in school record, his request was not accepted. Civil suit filed by workman was also dismissed. 2nd party submits that correct date of birth of Ist party was 12-7-43. Ist party had submitted fake documents declaring his date of birth 12-7-48. All adverse contentions of workman are denied. It is submitted that workman was retired on 2-7-43 considering his correct date of birth. Action of management is proper.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Regional Manager, New India Assurance Co.Ltd. Bhopal in superannuating Shri Ram Das Sunmoriya w.e.f. 31-7-03 considering his date of birth as 12-7-43 instead of 12-7-48 as claimed by the	In Affirmative
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workman is justified?	
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. Point No.1 The term of reference pertains to superannuation of Ist party considering his date of birth 12-7-43 instead of 12-7-48. Though Ist party has raised the dispute and filed statement of claim, he has failed to participate in reference proceeding, no evidence is adduced by him. On 12-2-2011, reference was proceeded in his absence. Management has filed affidavit of evidence of Shri B.K.Menon supporting contentions of management in Written Statement. The documents Exhibit M-1 is copy of judgment in Civil Suit. M-2 is copy of letter dated 5-12-90. M-3 is copy of transfer certificate of Ist party. Ist party had submitted application for correction of his date of birth on 29-11-63. Documents Exhibit M-4 to M-6 produced by management about correct date of birth of the Ist party. Documents produced on the record my management Exhibit M-3,4 shows date of birth of Ist party is recorded 12-7-43. His request for correction of date of birth was not accepted. Civil Suit filed by him was dismissed. Date of birth of Ist party recorded 12-7-48 in Exhibit M-6 suffers from overwriting. Evidence of management's witness remained unchallenged. I find no reason to disbelieve evidence of management's witness and documents produced on record. Workman has failed to adduce evidence in support of his claim. Therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2074.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई इस्पात संयंत्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 02/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-26012/5/2007-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2074.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2008) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 27.09.2016.

[No. L-26012/5/2007-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/2/2008

Shri Johan Ram,
S/o Shri Man Singh,
Near Nirmala School,
Dalli Rajhara, Durg (CG)

...Workman

Versus

Managing Director,
Bhilai Steel Plant,

Bhilai, Durg (CG)

...Management

AWARDPassed on this 12th day of August 2016

1. As per letter dated 18-12-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-26012/5/2007-IR(M). The dispute under reference relates to:

“Whether the action of the management of Bhilai Steel Plant, Bhilai in superannuating Shri Johan Ram w.e.f. 31-3-2003 vide their order dated JM(PM&S)/TAS/ESTT/RAJ/2003/447 dated 19-3-03 and not considering the document declaring the date of birth as 9-11-48 is just and legal? Further, whether deducting the wages earned by the workman from 1-4-2003 to 31-3-2004 is just and legal? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/3. Case of Ist party workman is that he initially joined service of 2nd party through AEMSS Society as piece rated employee. He being uneducated person was not recruited by said society arbitrarily. In the year 1979, he was regularized by the employer 2nd party. In service record, his date of birth as recorded 18-1-52. As per his date of birth, he was due for retirement after age of 60 years on 31-1-2012. It is alleged that arbitrarily date of birth was recorded 25-3-38 is irrelevant. That District authorities certified his date of birth was 9-11-48 and issued such certificate on 5-3-03. That his date of birth was corrected by employer arbitrarily. As per rules, relating to the determination of date of birth, the documents of school certificate from educational institution, service record attested, abstract of register of birth, date maintained by Gram Panchayat, Baptism Certificate are required to be considered. Ist party had approached Civil Court Balod. The order of his retirement was statyed. Said order was challenged before ADJ Balod filing appeal. Stay order was vacated. That Hon’ble High Court, Bilaspur had setaside both orders and directed Labour Court to decide question of maintainability of civil suit. Workman reiterates that he is retired on incorrect date of birth. On such contentions, he prays for appropriate directions.

3. 2nd party filed Written Statement at Page 9/1 to 9/8 opposing claim of workman. 2nd party submits that Ist party Johan Ram was engaged as piece rated employer by KMSS Society. His services were regularized in 2nd party from 17-1-79. Workman raised dispute about his date of birth. In Form B Register, his date of birth is recorded 25-3-85. The age of superannuation is 58 years. Workman attained superannuation age on 31-3-96. By oversight, Ist party was continued in service. After mistake was detected, Ist part was retired on 31-3-03. In statutory register, i.e. Form B, personal particulars of employees are recorded. In 1984, Form B was introduced. Ist party workman had declared his age 35 years on 25-3-73. Ist party was examined by Medical Officer on 17-1-79. As per said examination, date of birth of workman was recorded 18-1-52 as workman had declared his age was 27 years. Said date of birth recorded in service record of Ist party was only for fitness purpose. Said date of birth was not correctly recorded following the rules. Ist party had filed Civil Suit challenging order of his retirement. Ist party had continued in service till 31-3-03 7 years beyond the age of superannuation on 31-3-96. The interim order granted by Civil Court was set-aside in appeal by Additional District Judge, Balod. Both orders were set aside by the Honble High Court. Hon”ble High Court had given directions to the Civil Court to decide the question of maintainability also. 2nd party reiterates that civil suit was dismissed in default. Ist party workman had raised present dispute is not tenable. It is barred by principles of res judicata. On such ground, 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Bhilai Steel Plant, Bhilai in superannuating Shri Johan Ram w.e.f. 31-3-2003 vide their order dated JM(PM&S)/TAS/ESTT/RAJ/2003/447 dated 19-3-03 and not considering the document declaring the date of birth as 9-11-48 is just and legal?	In Affirmative
(ii) Whether deducting the wages earned by the workman from 1-4-2003 to 31-3-2004 is just and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. The terms of reference pertains to legality of superannuation of workman and not considering the documents of his date of birth 9-11-48. Claim of workman is opposed for the detailed pleadings given in the Written Statement. Ist party workman filed affidavit of his evidence supporting contentions in statement of claim that he was regularized with 2nd party in 1979, his date of birth was recorded 0-1-1952. He was due for superannuation on 31-1-2012. His date of birth was arbitrarily recorded 25-3-38 was irrelevant. The superannuation as per order dated 28-3-03 is illegal. His affidavit is also devoted about civil suit filed by him and order passed in civil suit and appeal and judgment passed by Honble High Court. That as per rules pertaining to Age Determination of 2nd party, documents of school certificate, service certificates attested, abstracts of register of birth etc. are to be considered. Documents Exhibit W- to W-3 are produced by workman. In his cross-examination, he was unable to tell which officer has signed on Exhibit W-2. Pay slips are prepared on CPS. He may have 102 pay slips with him. He was unable to tell which documents are seen while preparing Exhibit W-1. He received W-1 on 5-3-02. He did not recollect date of his retirement. That he studied upto 3rd standard. That he could not obtain certificate from the school as the school was closed. The evidence about date of birth of Ist party workman shown in Exhibit W-1 is not convincing. Exhibit W-2 is payslip in which date of birth of Ist party workman is shown 18-1-52. Ist party workman has not produced school leaving certificate. The date of birth of workman was recorded 18-1-52 as per Medical Certificate Exhibit M-1. Ist party workman had declared his age 27 years. The Medical Officer also recorded age of workman 27 years by appearance. It cannot be said a scientific examination for age determination. Ist party workman has challenged order filing civil suit and matter was taken in appeal and also before Hon'ble High Court. The copy of judgments are produced at Exhibit M-4,5,6. After directions were given by Honble High Court to Lower court to decide the point of maintainability of suit, Ist party did not participate in the suit ad allowed civil suit to be dismissed for his absence. Civil suit was not decided finally and argument advanced by Shri A.K.Shashi that dispute is barred by resjudicata under Section 11, CPC cannot be accepted. However workman had opted remedy of civil suit and did not prosecute the suit after direction by Hon'ble High Court, the dispute raised under ID Act is barred by principles of estoppel instead of resjudicata. For above reasons, I record my finding in Point No.1 in Affirmative.

6. Point No.2- Point No.2 pertains to deduction of wages during the period 1-4-03 to 31-3-04. The statement of claim is silent w.r.t. deduction of wages for above said period. However Written Statement filed by 2nd party is clear that Ist party workman had overstayed in service till 31-3-03. 2nd party has also not pleaded about recovery for above period in its Written Statement. Evidence of management's witness Rohit Kumar is also silent about recovery of deduction of wages for above mentioned period. Therefore there is absolutely no controversy between parties about deduction of wages for the period 1-4-03 to 31-3-04. For the reasons discussed above, I record my finding in Point No.2 that controversy about deduction of wages could not be decided for want of pleading ad evidence between parties.

7. Point No.3- In view of my finding in Point No.1,2 action of management superannuating workman from 31-3-03 is legal. Parties have not pleaded or adduced any evidence w.r.t. recovery of wages for the period 1-4-03 to 31-3-04, the controversy could not be decided. In view of findings on Point No.1,2, workman is not entitled to any relief. Accordingly I record my finding in Point No.3.

8. In the result, award is passed as under:-

- (1) The action of the management in superannuating workman from 31-3-03 is legal.
- (2) 2nd party has not claimed any recovery of wages for the period 1-4-03 to 31-3-04.
- (3) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2075.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई इस्पात संयंत्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 50/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-26012/2/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2015) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 27.09.2016.

[No. L-26012/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/50/15

Shri G.Rajesh,
S/o K.K.Gangadharan,
Lalita Niwas, House No. 771,
Street No.10, Shanti Nagar,
Bhilai, Distt. Durg (CG)

... Workman

Versus

Chief Executive Officer,
Bhilai Steel Plant,
Bhilai, Distt. Durg (CG)

...Management

AWARD

Passed on this 10th day of August 2016

1. As per letter dated 5-5-15 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-26012/2/2015-IR(M). The dispute under reference relates to:

“Whether the action of Bhilai Steel Plant, Bhilai in terminating the services of Shri G.Rajesh S/o K.K.Gangadharan w.e.f. 14-7-2014 by way of withdrawing offer of appointment No. Estt./Rectt/07 dated 2-1-98 is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party himself submitted that he filed OA 402/15 before CAT and he doesnot want to prosecute the reference. 2nd party could not file Written Statement. As such No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2016

का.आ. 2076.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भिलाई इस्पात संयंत्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 51/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.09.2016 को प्राप्त हुआ था।

[सं. एल-26012/3/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th September, 2016

S.O. 2076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2015) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bhilai Steel Plant and their workman, which was received by the Central Government on 27.09.2016.

[No. L-26012/3/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/51/15

Shri G.Girish,
 S/o K.K.Gangadharan,
 Lalita Niwas, House No. 771,
 Street No.10, Shanti Nagar,
 Bhilai, Distt. Durg (CG)

...Workman

Versus

Chief Executive Officer,
 Bhilai Steel Plant,
 Bhilai, Distt. Durg (CG)

...Management

AWARD

Passed on this 10th day of August 2016

1. As per letter dated 5-5-15 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-26012/3/2015-IR(M). The dispute under reference relates to:

“Whether the action of Bhilai Steel Plant, Bhilai in terminating the services of Shri G.Rajesh S/o K.K.Gangadharan w.e.f. 14-7-2014 by way of withdrawing offer of appointment No. Estt./Rectt/848 dated 10-8-94 is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party himself submitted that he filed OA 401/15 before CAT and he doesnot want to prosecute the reference. 2nd party could not file Written Statement. As such No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2077.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.ई.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ सीआर सं. 54/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/38/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. C.R. No. 54/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the BEL and their workmen, which was received by the Central Government on 29.09.2016.

[No. L-40012/38/2012-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE

DATED : 21/09/2016

PRESENT : Shri V S RAVI, Presiding Officer

C R No. 54/2012

I Party

The General Secretary,
BEL Workers Union, CITU Office,
1st Main Road, Yeswanthpur,
Bangalore-560022

II Party

The General Manager, (HR), BEL,
Jalahalli, Bangalore Complex,
Bangalore-560013

AWARD

1. The Central Government vide Order No. L-40012/38/2012-IR(DU) dated 05.12.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the demand of the Bharat Electronics Workers Union Bangalore seeking regularisation in service from the date of commencement of their temporary service for 26 employees is legal and justified? If not, what relief the said Union is entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent, for several dates.

3. On a perusal of records it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. Already, Vakalat filed for II party and also Mr. Thimmaiaya, Junior Law Officer of II party appeared in person and Counter Statement has been filed by the II party. Further, it is specifically pointed out in the Counter Statement that the I party workers have worked only as the temporary workers and that too for a specified period, and hence, they are not entitled for any reliefs, and the above reference is wholly untenable. In such circumstances, the matter is posted for passing Award after the perusal of entire records brought on record.

4. In the above mentioned circumstances, it would be very much clear in the present matter, that the I party has no interest to contest the present matter, inspite of sufficient opportunities and also inspite of issuing notices of hearing to the I party, from the year, 2013. It is for the I party to make out a case that first party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the II party Mr. Thimmaiaya, Junior Law Officer, has appeared before this Tribunal and also, reported that, as per the provisions of law, the relevant benefits have been already granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of material available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the first party by way of RPAD and the conduct of First Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following order.

ORDER

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 21st September, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2078.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लासेन एण्ड टूब्रो लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 70/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.09.2016 को प्राप्त हुआ था।

[सं. एल-42012/87/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2078.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 70/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the M/s. Larsen & Toubro Ltd. and their workman, which was received by the Central Government on 29.09.2016.

[No. L-42012/87/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 20th September, 2016

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 70/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Larsen & Toubro Ltd. and their workman)

BETWEEN

Sri A. Iyyappan : 1st Party/Petitioner

AND

The Project Director : 2nd Party/Respondent
 M/s Larsen & Toubro Ltd.
 ECC Division, Kudankulam Nuclear Power Project
 Kudankulam PO, Radhapuram Taluk
 Tirunelveli-627106

Appearance:

For the 1st Party/Petitioner : Sri T. Ramkumar, Advocate

For the 2nd Party/Respondent : M/s Aiyar & Dolia, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/87/2015-IR (DU) dated 19.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of M/s Larsen & Toubro Ltd., Kundankulam in removing Sri Iyappan from service w.e.f. 24.08.2012 is legal and justified? If not, what relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 70/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined service of the Respondent on 18.08.2009 as a Fitter. The petitioner was not given any written order of appointment by the Respondent. The petitioner was employed in the Electrical Section in Panel Erection Department of the Respondent. This work was supervised by the Electrical In-charge of the Respondent. From the date of joining service the petitioner had been discharging his duties sincerely and diligently. He had been engaged in the project undertaken by the Respondent at Kudankulam Nuclear Power Project. The engagement of the petitioner was continuous. The Respondent has been providing various benefits like Provident Fund Scheme, employees Family Pension Scheme etc. to its workmen and the petitioner was also provided with the said benefits. The petitioner has participated in various extra-curricular activities conducted by the Respondent. The petitioner was issued certificates of merit on such occasions. The Respondent had been maintaining Daily Labour Attendance and Allocation Register for the workmen employed in Panel Erection Department wherein the petitioner was employed. The Respondent had made application before the authorities of Kudankulam Nuclear Power Project to issue necessary entry passes and Identity

Cards to the workmen including the petitioner. During the entire period of his service the petitioner had been directly employed by the Respondent. He was not employed through Sub-Contractors. While so, the petitioner was not allowed to report for duty from 13.10.2011 without assigning any reason. When the petitioner requested the Respondent to give him work he was informed that work could not be given to him because of problem in Nuclear Power Project. While denying employment to the petitioner, the Respondent continued to engage workmen who were juniors to the petitioner. The respondent arbitrarily closed the PF Account of the petitioner without his consent. The petitioner approached the Respondent on several occasions and the Respondent started to provide employment to the petitioner with effect from 05.07.2012 again. But this was only for about 7 weeks. The Respondent again denied employment to the petitioner from 24.08.2012. The work done by the petitioner under the Respondent was perennial in nature. He had been engaged by the Respondent continuously until 24.08.2012 with an artificial break between 13.10.2011 and 05.07.2012. Termination of the petitioner from service w.e.f. 24.08.2012 is arbitrary. The Respondent has not issued any notice to the petitioner or paid any compensation to him before he was terminated from service. The dispute is raised accordingly. The petitioner is entitled to be reinstated in service with full backwages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner was never an employee of the Respondent. The Respondent has not given any offer of appointment or any appointment letter to the petitioner. The Respondent has engaged numerous certified Sub-Contractors to fulfill its commitments. The petitioner was engaged by a Sub-Contractor. The Respondent is engaged in the business of undertaking various construction activities for the Government and Public Sector and also several international projects. The Nuclear Power Corporation of India had given the work of execution of Main Plant Electrical System Works to the Respondent. The Respondent had engaged several Sub-Contractors for executing the work. One of the Sub-Contractors, Senthil Kumar had employed the petitioner as a Fitter in Semi-Skilled category as a Daily Paid Contract Workman during the period from 18.08.2009 to 13.10.2011. All the workmen were supervised by the Respondent's Senior Engineer at the site. The Respondent has taken labour license for all the Sub-Contractors engaged in the project. Employees Provident Fund has been deducted from the Sub-Contractor's Fortnight Bill and deposited in the workmen's account every month. Competitions were conducted by the Respondent to encourage and motivate workmen and staff at project sites. Entry Passes and ID Cards are issued to all the workmen in the name of the Respondent. This cannot be misused for getting unjust benefit out of this. During the month of December protesters had picketed the main entry points of Kudankulam Nuclear Power Plant making it impossible to carry out any work at the project site. The strike continued till 19.03.2012. After the strike was over, the Respondent had instructed all the Sub-Contractors to re-mobilize the workmen. However, Senthil Kumar under whom the petitioner was working did not report for work. Most of the workmen returned for work at the project site after 20.03.2012. But the petitioner did not turn up. He was again admitted to work under Sub-Contractor on 05.07.2012 and continued to work till 24.08.2012. Thereafter the petitioner stopped attending work. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W19.

7. The points for consideration are:

- (i) Whether the petitioner was in the service of the Respondent?
- (ii) Whether the service of the petitioner was terminated by the Respondent on 24.08.2012?
- (iii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner has claimed that he was working for the Respondent in the Nuclear Power Project at Kudankulam from August 2009 continuously till he was terminated from service on 24.08.2012, except for a short break. It is alleged by the petitioner that the termination is not legal, that there is no justification for the same, that it was done without any notice or notice pay and that he is entitled to be reinstated in the service of the Respondent.

9. The case of the Respondent is that the petitioner was working only under the Sub-Contract and was never directly employed by it. Thus according to the Respondent the petitioner is not entitled to the relief of reinstatement claimed by him.

10. The petitioner has given evidence as WW1. In the Proof Affidavit filed by him he has reiterated his case in the Claim Statement. He has stated that he was all along in continuous service of the Respondent w.e.f. 18.08.2009 as a Fitter until his service was terminated by the Respondent on 24.08.2012. He has further stated in the Proof Affidavit

that he was in continuous service during the period except for a few days during which time the Respondent has denied work to him.

11. Apart from his oral evidence the petitioner relies upon the documents marked on his side also to establish his case that he was in continuous employment of the Respondent. According to him the Respondent had not given him any appointment order. However, the documents produced would substantiate his case that he was in continuous employment.

12. The First document available on the side of the petitioner is Ext.W1. This is the temporary pass issued by the Respondent in the name of the petitioner with designation as Fitter for a few days in July 2009. Ext.W2 is the Height Pass in the name of the petitioner issued on 16.07.2009. Ext.W4 is a Daily Labour Attendance and Allocation issued from the Department of Panel Erection. Of course, the name of the Respondent is not seen in the document. However, there is no case for the Respondent that this is not issued on its behalf.

13. Ext.W19 is the extract of such Daily Labour Attendance and Allocation Register for different dates. The name of the petitioner also figures in the Register alongwith other names. This shows continuous allocation of work to the petitioner and others in the Department of Panel Erection. Ext.W19 starts from June 2010 and continues upto September, 2010.

14. There are other documents also showing that the petitioner was engaged in the establishment. Ext.W5 is the contribution Card for the Family Pension Scheme in the name of the petitioner for the period from 01.04.2010 to 31.03.2011. Ext.W6 is the Contribution Card for the period from 01.04.2011 to 31.03.2012. These documents are in the name of the Respondent. There is also the EPF Account Statement for the period from April 2009 to March 2010 marked as Ext.W17 and EPF Account Statement for the period from April 2010 to March 2011 marked as Ext.W18 standing in the name of the petitioner and signed on behalf of the Respondent. All these documents are specifically in the name of the Respondent. Apart from this there are several merit certificates issued to the petitioner by the Respondent and marked as Ext.W7 to Ext.W12. The certificates are all issued by the Respondent after holding various competitions in which the petitioner had participated and won prizes. Ext.W13 and Ext.W16 are identity cards issued to the petitioner by the Respondent. In these Identity Cards the Respondent is mentioned as the establishment which employed the petitioner. Ext.W15 is a proforma for screening the workmen, also showing the name of the Respondent as the Contractor.

15. The documents referred to earlier clinchingly establish that the petitioner was working directly under the Respondent. There is no evidence to accept the case of the Respondent that the petitioner was engaged through a Sub-Contractor and there is no employer-employee relationship between the petitioner and the Respondent. Though MW1 is examined on behalf of the Respondent, his evidence will not serve the purpose of proving the case of the Respondent that the petitioner was not directly engaged by it. MW1 had no direct knowledge of the engagement of the petitioner. He never worked at Kudankulam Nuclear Power Project at Kudankulam. His evidence was based on records only. He does not know if Senthil Kumar referred to as Sub-Contractor of the Respondent had any license under CLRA Act.

16. All the documents produced point to the Respondent as the direct employer of the petitioner. The case of the petitioner is that he was being engaged continuously from August 2009 though he was not given any order of appointment. In fact there is no case for the Respondent in the Counter Statement that the petitioner was engaged only intermittently and not continuously as claimed by him. The only case is that the engagement was through a Sub-Contractor. However, there is no evidence in this respect. On the other hand, the evidence given by the petitioner is sufficient to show that he was being engaged continuously by the Respondent. The petitioner has stated about a short break in the service before he was orally terminated on 24.08.2012. The counter Statement of the Respondent states that no work had taken place at Kudankulam Project during the period on account of strike. It is admitted in the Counter Statement that when workmen had gathered after the strike was over petitioner was also engaged even though according to the Respondent Senthil Kumar, the Sub-Contractor was not seen to take up the work after the strike was over. The Respondent has not stated through whom the petitioner was engaged again in the absence of Senthil Kumar. This also is indicative of the fact that the petitioner was engaged directly.

17. The petitioner has stated that he was not provided with work after 24.08.2012. According to the Respondent it was not denial of work by it but absenteeism of the petitioner from work. However, it is not disputed that the petitioner had not worked after 24.08.2012. The case of the petitioner that he was orally terminated from service w.e.f. 24.08.2012 is to be accepted.

18. The Respondent has no case that it has given any notice of termination from service or any notice pay or compensation was given also. The further case of the petitioner that his juniors continued to be engaged by the Respondent even after his termination is not denied by the Respondent. Apparently, termination of the petitioner from service is in violation of Section-25(F) of the Industrial Disputes Act. In the circumstance the petitioner is entitled to be reinstated in the service of the Respondent, but without backwages.

19. In view of my discussion above, an Award is passed as below:

The Respondent is directed to reinstate the petitioner in service in his previous position, within a month of the publication of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th September, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Sri A. Iyyappan
For the 2 nd Party/Management	:	MW1, Sri K. Shanmughanathan

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	13.07.2009	Form for issue of temporary pass submitted by the Respondent to issue the pass for the petitioner
Ext.W2	16.07.2009	Height Pass issued by the Respondent to the petitioner
Ext.W3	April, 2009	Contribution Card for the period between 01.04.2009 and 31.03.2010 under the Employees Family Pension Scheme
Ext.W4	29.12.2009	Daily Labour Attendance and Allocation in Panel Erection Department on 29.12.2009
Ext.W5	April, 2010	Contribution Card for the period between 01.04.2010 and 31.03.2011 under the Employees Family Pension Scheme
Ext.W6	April, 2011	Contribution Card for the period between 01.04.2011 and 31.03.2012 under the Employees Family Pension Scheme
Ext.W7	28.11.2009	Certificate of Merit issued to the petitioner by the Respondent for winning prize in Quality Slogan Competition held on 28.11.2009
Ext.W8	Nov., 2010	Certificate of Merit issued to the petitioner by the Respondent for winning prize in Quality Poster Competition held on November, 2010
Ext.W9	Nov., 2010	Certificate of Merit issued to the petitioner by the Respondent for winning prize in Quality Quiz Competition held on November, 2010
Ext.W10	Nov., 2010	Certificate of Merit issued to the petitioner by the Respondent for winning prize in Quality Essay Tamil Competition held on November, 2010
Ext.W11	Jan., 2010	Certificate of Merit issued to the petitioner by the Respondent for winning prize in Quality EHS Tamil Slogan held on January, 2010
Ext.W12	Jan., 2011	Certificate of Merit issued to the petitioner by the Respondent for winning prize in Quality EHS Quiz Competition held on January, 2011
Ext.W13	01.06.2011	Temporary Identity Card issued to the petitioner by the Respondent Management
Ext.W14	12.11.2012	Store Clearance Certificate issued to the petitioner by the Respondent
Ext.W15	08.06.2012	Proforma for screening workmen engaged by Contractor/Sub-Contractor submitted by the Respondent for the petitioner to the Kudankulam Nuclear Power Plant
Ext.W16	20.06.2011	Identity Card issued to the petitioner
Ext.W17	March 2009-April 2010	EPF Account Statement of the petitioner for the period between April 2009 and March 2010
Ext.W18	March 2009-April 2010	EPF Account Statement of the petitioner for the period between April 2010 and March 2011

Ext.W19 - Daily Labour Attendance and Allocation in the Department of Panel Erection

On the Management's side

Ext.No.	Date	Description
	Nil	

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2079.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) सं. 186/2006] को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/90/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2079.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. Reference (CGITA) No. 186/2006] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the BSNL and their workman, which was received by the Central Government on 29.09.2016.

[No. L-40012/90/2003-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st September, 2016

Reference: (CGITA) No. 186/2006

The General Manager,
BSNL, New Telephone Exchange Building,
Jorawal Palace,
Banaskantha,
Palanpur (B.K.) – 385001

...First Party

V/s

Sh. Mukeshkumar D. Parmar,
C/o Shramjivi Kamdar Sangh, Pitamber Mehta Madh,
Moti Bazar Road,
Palanpur (B.K.) – 385001

...Second party

For the First Party : Shri Nilesh K. Trivedi

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/90/2003-IR(DU) dated 31.07.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of BSNL, Palanpur not to give employment to workman Sh. Mukeshkumar D. Parmar is justified or legal? If not, what relief the workman is entitled for and since when?”

1. The reference dates back to 31.07.2003. Shri N.K. Trivedi advocate filed the vakalatpatra Ext. 6 on behalf of the first party but second party did not respond despite personal service by registered post and also issuing fresh notice Ext. 9 on 04.01.2016. Thus it appears that second party does not want to prosecute the case. Hence the reference is decided in affirmative.

2. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2080.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विदेश संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 7/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.09.2016 को प्राप्त हुआ था।

[सं. एल-40012/132/91-डी-2(बी)-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2080.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 7/1992) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Videsh Sanchar Nigam Limited and their workman, which was received by the Central Government on 30.09.2016.

[No. L-40012/132/91-D-2(B)-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 7/1992

Shri Sohan Singh Rawat,
S/o Shri Ranjeet Singh
Village Ladpur, P.O. Raipur,
Distt. Dehradoon, Uttar Pradesh-248001

...Workman

Versus

The Deputy General Manager (D.U.),
Videsh Sanchar Nigam Limited,
Ahmad Upgrah Bhu Kendra Lachhiwala,
PO Doiwala
Distt. Dehradoon
Uttar Pradesh-248140

...Management

AWARD

Background facts giving rise to the present reference are that the appropriate Government vide its order No.L-40012/132/91-D-2(B) IR(DU) dated 06.01.1992 referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Videsh Sanchar Nigam Limited, Dehradoon in terminating the services of Sohan Singh Rawat, S/o Shri Ranjeet Singh, with effect from 31.05.1990 is legal and valid? If not, to what relief the workman is entitled to?”

2. It transpires from the record that Central Government Industrial Tribunal cum Labour Court, New Delhi vide its impugned award dated 15.12.1997 held that telecom department does not fall within the definition of 'industry' as defined under Industrial Disputes Act, 1947(in short the Act). As such, the workman is at liberty to approach the appropriate legal forum. The above award of the Tribunal was challenged belatedly by way of Civil Writ Petition No.289 of 2007 titled 'Sohan Singh Rawat vs. Central Government Industrial Tribunal cum Labour Court, Delhi and others' by the workman, Shri Rawat and the Hon'ble High Court of Uttarakhand vide its judgment dated 13.03.2014 set aside the award passed by this Tribunal and matter was remanded to this Tribunal for deciding it de novo in accordance with law after hearing both the parties. It is pertinent to mention here that the Hon'ble High Court of Uttarakhand placed reliance upon the case of General Manager, Telecom Vs. Srinivasan Rao and others (1997(s) SCC 767) and held that "Telecommunication Department" is an industry within the definition of industry under the Act and as such the impugned award passed by the Tribunal on the face of it was held to be against dictum of the judgement of the Hon'ble Apex Court.

3. After the remand of the above reference vide judgement dated 13.03.2014 to this Tribunal, notice was ordered to be issued to the workman as well as the management. Though earlier, neither the workman nor any authorized representative appeared on behalf of the workman, but later on put up appearance. It would not be out of place to mention here that evidence in the case was recorded earlier when the matter was initially referred to this Tribunal by way o reference under Section 10 of the Industrial Disputes Act, 1947, as mentioned above.

4. It is clear from the claim statement filed by the workman that he has averred that he was working as casual labour with effect from 01.06.1987 till 31.05.1990. Details of the working period is as under:

- (i) 01.06.1987 to 31.12.1987
- (ii) 25.01.1988 to 04.10.1988
- (iii) 06.02.1989 to 13.05.1989
- (iv) 13.01.1990 to 31.05.1990

5. The workman also approached the management for enhancement of his wages, which was to the disliking of the management as a result of which management ultimately terminated his services on 30.04.1990. Workman also finally challenged his termination as casual/daily wager and sought reinstatement in service with full wages.

6. Management has also filed reply to the claim statement filed by the workman and took certain preliminary objections stating inter alia that Videsh Sanchar Nigam Ltd. is not an industry and as such not covered under the Act. The workman does not fall within the definition of 'workman' under the Act. It was also alleged that the workman was appointed on temporary basis for the period from 01.06.1987 to 31.05.1990. He was initially engaged for 30 to carry out casual nature of job. Details of working days of the workman is as under:

<u>Year</u>	<u>Period</u>	<u>No. of Working Days</u>
1987	01.06.1987 to 31.12.1987	208 days
1988	25.01.1988 to 04.10.1988	207 days
1989	06.02.1989 to 21.12.1989	201 days
1990	18.01.1990 to 30.04.1990	95 days

7. It was specifically averred that the workman has not worked for 240 days in any of the calendar years mentioned above, hence he is not entitled to legally claim for regularization. Reference is also made to the judgement of High Court of Delhi in Raj Kishore Rai vs. Videsh Sanchar Nigam Ltd., wherein it was held as under:

"The petitioner was employed on daily wages. Since the petitioner worked for a total period of 177 days, he is not entitled to relief from this court."

8. Accordingly it was alleged that the workman, Shri Sohan Singh Rawat, is not entitled for any relief under the law. Reference was also made to his own statement as well as letters which shows that the workman has left the job of his own.

9. It transpires from the record that no specific issues in the present case were framed by this Tribunal as the only material question which required determination was the issue referred by the appropriate Government was to be adjudicated by this Tribunal.

10. Workman in order to prove his case against the management tendered in evidence his affidavit, Ex.WW1/A, which is on the same lines as the averments made in the claim statement.

11. Management, in support of the stand taken in the written statement examined Shri Trilokendra Singh, Engineer in Chief as MW1, whose affidavit is Ex.MW1/A.

12. It is clear from perusal of the evidence as well as pleadings on record that the case of the workman herein is that his service was terminated by the management in April 90 without any notice as required under Section 25F of the Act. He was also not paid minimum wages as per the Uttar Pradesh Government order. It is further clear from the evidence on record that employment was given to the claimant through Employment Exchange and he was working right from 1983 to 1990. Management has come with the specific stand that the workman has not completed 240 days in a calendar year preceding the date of his termination. Management has also filed copy of the various sanction orders which shows that the management had deployed the workman during the said period on daily/casual basis. Though the management in Para 1 of the written statement has denied that the workman herein was appointed on temporary basis on 01.06.1983 to 31.05.1990 but in the subsequent line it has clearly admitted that he was initially engaged for 3 days for temporary/casual work. His engagement was not on regular basis. The number of days during which the workman was employed has been given in Para 1 of the reply and during the period 01.06.1987 to 31.12.1987 number of working days is shown as 208, from 20.01.1988 to 04.10.88 it is 207 days, , from 06.02.1989 to 21.12.2989 it is 201 days and lastly in the from 18.01.1990 to 30.04.1990 it is 95 days. Though the case of the workman is that he was regularly performing his duties and was never absent, yet the management has not taken pains to produce and prove muster rolls as well as attendance rolls of the workman in respect of the period commencing from 01.06.1983 to 1990. Record of the case further shows that ample opportunity was given to the management to adduce evidence so as to prove its stand. Management has filed annexure copy of attendance roll for May, 1990 and the same is photocopy and has not been duly proved as required under the law. Similarly, there are various sanction orders on record which shows that Shri Sohan Lal, the workman herein was engaged during the period 1987 till 1990 as workman. Those these documents are not exhibited or proved in accordance with law. Even if for a limited purpose these documents are taken into consideration, they would duly prove that the workman was in the employment of the management during the above period.

13. Now, the next vital question is whether the workman has worked for 240 days during the calendar year preceding the date of his termination. It is not out of place to mention here that the management is a Government and is having five day week. Number of working days in a calendar year required in such a case is 206 days. Affidavit of the claimant Ex.WW1/1 also clearly states that he has completed more than 240 days in one calendar year whereas the management has not proved any document on record to show month wise or year wise working days which the claimant has put in during currency of his job. In this regard, it is necessary to mention that the management has filed various sanction orders pertaining to the year 1988, 89 and 90 and in all the sanction orders, there is mention of the name of the claimant herein, who has worked almost in every month for 29 days, which again fortifies the claim of the workman that he was regularly performing his duties. Learned A/R for the management could not satisfy the court as to why the management has not proved the documents which have been filed in support of the stand that the number of working days of the claimant herein were less than 240 days in a calendar year. No doubt, in Batla Co-operative Sugar Mills vs. Sowaran Singh (2005(8) SCC 481), it has been held that initial onus to prove that the workman has worked for 240 days continuously in a calendar year is always upon the workman and it is for the workman to adduce evidence at the time of examining himself or filing of affidavit to prove the said factum. But equally settled is the law that the management is in possession of a document, to which the opposite party does not have access. It is equally the duty of such a party, i.e. management in the case in hand to have filed all the documents pertaining to attendance of the workman so as to prove that number of working days, in fact, is less than 240, which is the stand of the management in the instant case. Management has not specifically mentioned about the documents which are filed with the written statement with the management so as to prove the stand taken by them. Rather, in Para 3 of the written statement, management has come with a strange plea that the claimant herein has left the job on his own will , as such, there was no question of issuance of notice. To my mind, this stand of the management is a figment of imagination inasmuch as there is no documentary evidence or much less oral evidence from the said of the management to prove that claimant herein has left job of his own.

14. In Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation (1985 (2) LLJ 539), Hon'ble Apex Court considered the meaning of the expression 'actually worked under the employer', as used in Section 25B of the Act. While interpreting the above expression, it was ruled that actual working days cannot mean only those days during which the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service. This will also include Sundays and other gazette holidays or paid holidays, though the workman has not actually put in service or worked during this period. Similar view later on was taken by the High Court of Uttarakhand State in State of Uttarakhand vs. Balram decided on 07.05.2002. If ratio of the law contained in the above ruling is applied in the context of the stand taken by the management in its written statement, then also number of working days would exceed 240 days in a calendar year. Since in the year 1987, the workman started working only from 01.06.187, therefore number of working

days shown in para 1 of the written statement is 208 days, thereafter in the year 1988 it is 207 days are mentioned in 1988 it is 207 days, which clearly shows that by adding the number of Sundays and gazetted holidays, the same is likely to exceed the figure of 240 days. Thus, even if it is assumed that the claimant worked for less than 240 days, then adding holidays and Sundays etc. by applying the ratio of American Express Banking Corporation case(supra), figure would exceed 240 days. Accordingly, it is held that the workman has worked for 240 days in a calendar year.

15. Now the next residual question is whether the workman was required to be served with one month notice or salary in lieu of such notice of one month before order of termination of the workman. During the course of arguments, learned A/R for the management argued that the claimant herein does not fall within the definition of Section 2(s) of the Act.

“2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or
- (ii) Who is employed in the police service or as an officer or other employee of a prison , or
- (iii) Who is, employed mainly in a managerial or administrative capacity, or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature”.

16. It is clear from the stand taken by the management in its pleadings that the workman herein was engaged on daily or casual basis and there was no question of serving of notice upon the workman as he left the job of his own. Since recruitment of the workman herein was through Employment Exchange, as per stand taken by management itself, claimant herein was engaged on daily or casual basis, as such, workman in the present case would fall within the definition of ‘workman’. This question came for consideration before the Hon’ble Apex Court in the case of Devender Singh Vs. MC Sanaur (AIR (2001) SCC 2532) wherein while interpreting provisions of Section 2(s) of the Act, it was held as under:

‘The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.

The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of ‘workman’.

17. Since in the case in hand, admittedly no notice in writing was served upon the workman before termination of his job, nor the workman was given one month salary/wages in lieu of such notice, as such, there is clear violation of mandatory provision of Section 25F of the Act, which provides that termination of a workman who has completed 240 days in a calendar year is illegal, null and void in case the workman is not given one month notice or salary in lieu of such notice to the workman before order of his retrenchment or termination. Resultantly, it is held that termination of services of the workman herein is illegal, null & void and against the provisions of section 25F of the Act.

18. Now, the other question which is required to be determined, in terms of reference as to what relief the workman is entitled inasmuch as termination of his service with effect from 31.05.1990 is held to be illegal, null and void.

19. Learned A/R for the workman during the course of arguments heavily relied upon the case of Gauri Shankar vs. State of Rajasthan (2015(145) FLR 671) wherein the Hon’ble Apex Court dealt with the question of reinstatement or

award of compensation to workman who was held be casual employee of the management. Workman in the said case was a casual employee with the Forest Department in the State of Rajasthan, whose services were later on terminated without notice. Labour Court held that removal of the workman from service was wrong and illegal. The said award was challenged in writ petition before the High Court and Hon'ble High Court observed that since the workman was engaged on casual basis, as such, instead of ordering reinstatement, compensation of Rs.1.50 lakh was ordered to be paid to the workman. Even in intra court appeal order of Single Judge was upheld. However, workman took the matter in appeal to the Hon'ble Apex Court and finally order of the Labour Court was upheld and management was directed to reinstate the workman in his post with 25% back wages from the date of termination till the date of the award.

20. Reliance was also placed by the workman upon the case of Raj Kumar Dixit vs M/s. Vijay Kumar Gauri Shankar Kanpur Nagar(2015 (146) FLR 158). In this case also, service of a workman was terminated under the UP Industrial Disputes Act, 1947, provisions of which are also analogous to the Industrial Disputes Act, 1947. Order of termination was held to be illegal by the Labour Court and High Court maintained order of termination but instead of 50% back wages, awarded Rs.2 lakh as compensation in lieu of reinstatement without back wages. It was against the background, case reached before the Hon'ble Apex Court and it was held that the Hon'ble High Court exceeded in its supervisory jurisdiction and should not have reviewed evidence on record and award of the Labour Court awarding reinstatement with 50% back wages from the date of termination till date of award was restored. Thereafter, management was directed to pay full back wages to the workman from the date of award till date of reinstatement in service.

21. There is another judgement Sudarshan Rajpoot Vs U.P. State Road Transport Corporation (2015 (144) FLR 7). It was a case where a workman was recruited directly to the post of driver. However, he worked for several years and later on his services were terminated without service of any notice or one month salary. It was against that background that matter reached before the Labour Court. In fact, workman in the said case met with an accident, as a result of which both his legs were broken. Later on, he presented himself with fitness certificate. However, he was told that his name was struck off from the post of driver. No order of termination was served upon him. Labour Court held that he has worked for more than 240 days in a calendar year . His removal without any valid reason is illegal. Management Corporation was ordered to reinstate the driver with full back wages. Matter was taken to High Court, which set aside the said award and ordered payment of retrenchment compensation. Matter was finally taken by the workman driver to the Hon'ble Apex Court wherein reference was made to various previous precedents and it was held that the very idea of reinstatement is that as far as possible the workman should be rehabilitated and put in the same position as the entire family of the workman normally suffers due to such adverse orders and they are sometimes deprived of source of sustenance. Resultantly, management was directed to reinstate the workman with 50% back wages.

22. In Bhuvanesh Kumar Dwivedi Vs. Hindalco Industries Ltd. 20), while dealing with the question of illegal retrenchment of workman, it was held that instead of grant of retrenchment compensation, workman was entitled to be reinstated in service.

23. It is true that earlier view of Apex Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, Hon'ble Apex Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. An order of retrenchment passed in violation of the Section 25F although can be set aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case where the workman particularly a daily wager, who has completed 240 days of work in a year preceding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice.

24. It is also clear that where there was delay in making reference or there was technical violation of provisions of law and there was no sanctioned post upon which the workman was working when his services were terminated, view was taken by the Hon'ble Apex Court that instead of ordering reinstatement, there should be payment of reasonable retrenchment compensation. However, in the case in hand, it is clear that the claimant herein was working on sanctioned post and he was sponsored through Employment Exchange and the workman was performing his duties regularly during currency of the job, management has been totally negligent in proving stand taken in the pleading, as such, Tribunal is of the view that payment of 50% wages from the date of termination of the claimant till date of award is in the interest of justice. However, from the date of the award, workman would be entitled to full wages till his reinstatement.

25. As a result of the above discussion, it is held that action of the management in terminating services of the workman is wrong, illegal, void and not justified under the law. Shri Sohan Singh Rawat, the workman herein, is entitled for 50% of back wages from the date of his termination till the date of award and thereafter he shall be entitled

to full wages as per law, till his reinstatement. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 28, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2081.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 34/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/188/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 34/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and Others and their workmen, which was received by the Central Government on 30.09.2016.

[No. L-42011/188/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 34/2016

Shri Rajesh Prasad S/o Shri Shiv Nandan Prasad, through
The President,
Delhi Offices and Establishment Employees Union
Affiliated to CITU, BTR Bhawan,
13 A, Rouse Avenue,
New Delhi-110 019

...Workman

Versus

1. The General Manager,
SCOPE,
Core No.8, 1st Floor,
SCOPE - 7, Lodhi Road,
New Delhi-110 003
2. M/s. Sentinels Security Pvt. Ltd.,
40/93, 40/92, Chittaranjan Park,
New Delhi-110 019

...Managements

AWARD

Central Government, vide letter No.L-42011/188/2015-IR(DU) dated 31.12.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Rajesh Prasad S/o Shri Shiv Nandan Prasad with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE (Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and bogus as requested by the workman Shri Rajesh Prasad S/o Shri Shiv Nandan Prasad? If yes, what relief the workman is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt

of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Rajesh Prasad opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 28, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2082.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 35/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/189/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 35/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and others and their workmen, which was received by the Central Government on 30.09.2016.

[No. L-42011/189/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 35/2016

Shri Pintu Kumar S/o Shri Ram Prasad, through
The President,
Delhi Offices and Establishment Employees Union
Affiliated to CITU, BTR Bhawan,
13 A, Rouse Avenue,
New Delhi-110 019

...Workman

Versus

1. The General Manager,
SCOPE,
Core No.8, 1st Floor,
SCOPE - 7, Lodhi Road,
New Delhi-110 003
2. M/s. Sentinels Security Pvt. Ltd.,
40/93, 40/92, Chittaranjan Park,
New Delhi-110 019

...Managements

AWARD

Central Government, vide letter No.L-42011/189/2015-IR(DU) dated 31.12.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Pintu Kumar S/o Shri Ram Prasad with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE (Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and bogus as requested by the workman Shri Pintu Kumar S/o Shri Ram Prasad? If yes, what relief the workman is entitled to?”

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Pintu Kumar opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 28, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2083.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑल इंडिया इंस्टिट्यूट ऑफ मेडिकल साइंसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 75/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/221/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2083.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 75/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the All India Institute of Medical Sciences and their workmen, which was received by the Central Government on 30.09.2016.

[No. L-42011/221/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 75/2016

Shri Bachan Singh Rana through
 AIIMS Employees Union,
 Ansari Nagar,
 New Delhi-110 029

...Workman

Versus

The Director,
 All India Institute of Medical Sciences,
 Ansari Road,
 New Delhi-110 029

...Management

AWARD

Central Government, vide letter No.L-42011/221/2015-IR(DU) dated 04.01.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the management has illegally and unjustifiably changed the nature of duties and his designation in the records from Mechanic to Khallasi (TA) and if so to what relief is he entitled and what directions are necessary in this respect?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Bachan Singh Rana opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 28, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2084.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल होटिकलचरल रिसर्च एंड डेवलपमेंट फाउंडेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 5/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.09.2016 को प्राप्त हुआ था।

[सं. एल-42011/167/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2084.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 5/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of the National Horticultural Research and Development Foundation and their workmen, which was received by the Central Government on 30.09.2016.

[No. L-42011/167/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 5/2016

Shri Kuldeep Singh S/o late Shri Surjan Singh,
C/o Jagriti Labour Union,
5/511, Sangam Vihar, Wazirabad
New Delhi -110 094

...Workman

Versus

1. The Director,
National Horticultural Research and Development Foundation,
Chitegaon Phata, Nasik-Aurangabad Highway,
P.O. Dama Sangvi, Tal-Niphad,
Nasik, Maharashtra-422 003
2. The Director,
National Horticultural Research and Development Foundation
Bagwani Bhavan, Plot No.47, Institutional Area,
Pankha Road, Janakpuri,
New Delhi-110 058

...Managements

AWARD

Central Government, vide letter No.L-42011/167/2015-IR(DU) dated 21.12.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the dismissal of the workman, Shri Kuldeep Singh S/o late Shri Surjan Singh by the management for reasons of insubordination/ disobedience, as stated by the management, is legal and justified ? If not to what relief the workman is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Kuldeep Singh opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.
4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : September 28, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2016

का.आ. 2085.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.टी.एन.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 177/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.09.2016 को प्राप्त हुआ था।

[सं. एल-40011/18/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th September, 2016

S.O. 2085.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 177/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the MTNL and their workmen, which was received by the Central Government on 30.09.2016.

[No. L-40011/18/2012-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 177/2012

Shri Virjesh Upadhyay,
General Secretary, MTNL Mazdoor Sangh,
D-14, Telegraph Square,
Doctor Lane, Gole Market,
New Delhi – 110 001

...Claimant

Versus

The Executive Director,
MTNL, Khurshid Lal Bhawan,
New Delhi

...Management

AWARD

A reference was received from Ministry of Labour and Employment vide letter No.L-40011/18/2012-IR(DU) dated 08.11.2012 for adjudication, terms of which are as under:

'Whether the action of the management of MTNL, New Delhi in not transferring all available vacancies to the candidates qualified through screening test, as claimed by the Union, is fair and legal? If not, what relief the union is entitled to?'

2. Claim statement was filed by the Shri Vrijesh Upadhyay, claimant herein wherein it is averred that the management invited applications from its workmen for screening test to fill vacancies in the cadre of Telecom Mechanics vide Notification No.STR/TM/Recruit/2006/15 dated 25.11.2005. The claimant appeared for the screening test conducted on 20.01.2008 and vide letter No.SDE(EXAM)TM/2006-07/66 dated 22.08.2008, 924 candidates were declared qualified. It was also mentioned therein that the candidates who have qualified the screening test but do not cover with the number of vacancies will have no claim for the post of Telecom Mechanic or for any other purpose whatsoever it may be. The management imparted training of Telecom Mechanics to 135 of the 924 qualified candidates. Though vacancies are available, management did not fill the vacancies in accordance with the rules laid down by Department of Telecommunication on 02.07.1991 vide CSR No.512(E) in contravention to an agreement with the representing federation on 16.11.1998. It has been averred that the management submitted vide its order No.SDE(EXAM)/TM/2006-07/66 referred above that screening test was conducted and 924 candidates declared qualified. 154 vacancies were available, which included 141 were taken through screening test and 13 through walk-in group. Four posts of physically handicapped category and two for ST could not be filled up due to non availability of eligible candidates. 148 candidates were imparted pre-appointment training. As per man-power statement, number of vacancies were 603, that the total vacancies available were 597, out of which 153 were reserved for NEEP(backlog) and 444 were shown available at that time and as per the instructions of the corporate office on 31.12.2011, it was 50% each for DOT R/R and NEEP. It was also intimated that further action would be taken thereafter as per guidelines received from Corporate Office. Thereafter, discussions were held on various dates and finally on 25.05.2012 dispute

was seized in conciliation, which ended in failure. Finally, it is prayed that an award may be passed in favour of the workmen,

3. Management contested the claim of the workmen herein, wherein it is admitted having taken out list of 924 qualified candidates as per letter dated 22.08.2008. It was also mentioned in the said letter the number of candidates duly selected for the post of TM is subject to the number of vacancies and that that number the candidates who have qualified the screening test but do not cover with the number of vacancies will have no claim for the post of Telecom Mechanic or for any other purpose what-so-ever it may be. Contents of para 2 of the statement of claim have also been admitted. It has been stated that the action of the management was as per the DOT RR in the year 2008 and have now agreed to go ahead with the MTNL RR after restructuring the manpower in the changed scenario and need of the company. It is further claimed that the claim of the claimants is against the interest of the candidates who did not qualify the screening test held in 2008 and waiting to appear in another test to get promoted at TMs. It has been prayed that the claim may be dismissed.

4. From the pleadings of the parties, my learned predecessor, vide an order dated 22.02.2013, observed that no other issue, than those referred for adjudication by the appropriate Government for adjudication, is made out. Thereafter, case was listed for evidence of the claimants.

5. Claimant union in support of their stand examined Shri Giriraj Sharma, Shri Ram Prakash Tiwari, Shri Hari Om, Shri Dharm Raj Singh, whose affidavits are Ex.WW1/A, Ex.WW2/A, Ex.WW3/A and Ex.WW4/A. Shri Giriraj Sharma submitted documents Ex.WW1/1 to Ex.WW1/5 and the remaining three claimants relied on the documents relied by Shri Giriraj Sharma, WW1. In the meanwhile, Shri Giriraj Sharma expired and it was impressed upon the A/R for the claimant that in view of provisions of sub section (8) of section 10 of the Industrial Disputes Act, dispute would be answered despite the fact that one of the claimant had expired. However, the claimant union was at liberty to get someone substituted if felt expedient, for Shri Giriraj Sharma. Thereafter, matter was listed for examination of Shri Vrijesh Upadhyay, witness of the management. However, during the course of the proceedings, it was stated by the parties that there were chances of amicable settlement between the parties. In view of this matter was fixed in the Lok Adalat on 26.08.2016.

6. On 26.08.2016, it was stated at the bar that the matter has been compromised and amicably settled between the parties. The learned A/R for the claimant also filed settlement agreement/deed dated 26.08.2016 Ex.C-1. In view of the fact that the parties had settled their dispute amicably, there remains no occasion to adjudicate the issue referred above.

7. Learned A/R for the claimant as well as Shri Nitin Kumar, Legal Assistant made a statement to the effect the matter has been settled vide settlement agreement/deed Ex.C-1, which is acceptable to them. Hence, their claim would stand satisfied by way of mutual settlement agreement ExC-1, which shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : September 28, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2086.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 28/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12012/80/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2086.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12012/80/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 23rd August, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 28/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their workman)

BETWEEN :

1. Sri S. Velu (Died)	: 1 st Party/Petitioner
2. V. Saroja	: 1 st Party/Petitioner
3. V. Subash	: 1 st Party/Petitioner
4. V. Sooriya	: 1 st Party/Petitioner
5. V. Prasanth	: 1 st Party/Petitioner

(Legal Heirs 2 to 5 Impleaded vide order in IA 273/2015

Dated 08.12.2015)

AND

The General Manager Indian Overseas Bank Central Office Anna Salai Chennai-600002	: 2 nd Party/Respondent
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Appearance:

For the 1st Party/Petitioner : M/s P. Uma, Advocate

For the 2nd Party/Respondent : Sri K. Sivashanmugam, Sri K.S. Giriprasath, Advocates

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-12012/80/2014-IR (B.II) dated 17.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the termination of Sri S. Velu by the management of Indian Overseas Bank is justified or not? What relief the petitioner is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 28/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed claim and counter statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are as below:

The petitioner was employed at Ramanujapudur Branch of the Respondent Bank as a Sweeper and sometimes as a Messenger in the leave vacancies of regular messengers since 29.08.1991. the petitioner's father was employed as a Sweeper at the same branch. After retirement of his father the petitioner was engaged permanently as Sweeper from 01.06.2002. This was informed to the Regional Manager, Tuticorin by two different letters in 2004 and in 2006. The then Manager had recommended that the petitioner is to be posted as Sweeper-cum-Messenger for the Branch. The Respondent and the Union entered into a settlement on 17.02.2011 for absorption of temporary messengers/full time/part-time Sweepers. As per the said settlement the petitioner was absorbed as a Part-Time Sweeper on 1/3 scale wages at Ramanujapudur Branch by letter dated 20.12.2011. At the time of appointment the petitioner was asked to give an undertaking with certain clauses. Since the date of appointment as Part-Time Sweeper the petitioner has been working continuously without any blemish in his record of service. On 02.05.2014 the Respondent terminated the service of the petitioner stating that the petitioner was found to have worked at Ramanujapudur Branch from 17.01.2009 to 25.01.2010 only. The Bank had stated that the petitioner had submitted false certificate in support of his experience. The petitioner was terminated without conducting any enquiry. He did not get any opportunity to prove his innocence by producing all the relevant records. This is in violation of the principles of natural justice. The termination

of the petitioner amounts to retrenchment and is in violation of Section-25F of the ID Act. Retrenchment Compensation was not paid to the petitioner. An award may be passed holding that the termination of the petitioner is illegal and also directing the Respondent to reinstate the petitioner in service with backwages, continuity of service and other attendant benefits.

4. The petitioner died during the pendency of the dispute. His wife and children were impleaded as supplemental petitioners 2 to 5. They have filed Claim Statement in tune with the claim statement filed by the original petitioner but restricting the relief to the monetary benefits including backwages.

5. The Respondent has filed Counter Statement contending as below:

A settlement dated 17.02.2011 was entered into between the recognized Trade Union and the Respondent under Section-12(3) of the Industrial Disputes Act for absorption of temporary Part-Time Sweepers/Sweepers as one-time absorption subject to satisfaction of certain educational qualification and prior service conditions. As per the said settlement, besides other eligibility conditions, one essential condition for absorption was the period worked as Temporary Part-Time Sweepers/Sweepers. They must have worked and completed 240 or more days in a calendar year as on 15.11.2010 and continued to be working. The petitioner submitted application claiming that he is eligible for absorption as he had worked for more than 240 days in the calendar year preceding 15.11.2010 in Ramanujapudur Branch. The petitioner was absorbed as a Part-time Sweeper based on an interview and was issued with Appointment Letter dated 20.12.2011. On verification of the records of Ramanujapudur Branch it was found that the petitioner had not worked at the Branch as Temporary Part-Time Sweeper until the cut-off date 15.11.2010. He had not complied with the essential condition regarding the period of work as provided in the settlement dated 17.02.2011. So he was not eligible for absorption. The petitioner had given a letter of undertaking to the Respondent to the effect that if the declaration made by him regarding his engagement is found false or any documents submitted by him regarding his age, qualification, etc. are not correct he will be liable to be terminated from the service of the Bank. Since the contents of the application submitted by the petitioner were found untrue he was terminated from service by order dated 02.05.2014. The petitioner had obtained a false certificate in connivance with the Manager of Ramanujapudur Branch. The Bank had initiated proceedings against the Manager who had given false certificate. The CBI, Chennai has conducted investigation and registered various criminal cases against Office Bearers of the Trade Union including Thomas Balan. The Office Bearers of the Union are known to have received huge amount for induction of ineligible candidates in the post of Messengers/Sweepers on permanent vacancies. As fraud and misrepresentation was committed by the petitioner he was not entitled to any opportunity of being heard or for any notice. The petitioner is not entitled to any relief.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W9 and Ext.M1 to Ext.M13.

7. The points for consideration are:

- (i) Whether the action of the Respondent in terminating the petitioner from service is legal and justified?
- (ii) What, if any is the relief to which petitioners 2 to 5 are entitled?

The Points

8. The case in the Claim Statement is that Velu, the deceased petitioner had started to work at Ramanujapudur Branch of the Respondent Bank since 29.08.1991. At that time he was working whenever the regular messengers were on leave. When his father who was Sweeper in the Branch retired in 2002 he is said to have been engaged permanently as Sweeper from 01.06.2002. He was absorbed as Part-time Sweeper by order of the Respondent dated 20.12.2011 based on the settlement entered into between the recognized union and the Respondent for absorption of Part-Time Sweepers. However, the Respondent terminated the service of the petitioner by order dated 02.05.2014 stating that he did not satisfy the criteria for absorption as per the settlement, that he had obtained false certificate regarding the period of his temporary employment.

9. WW1 is the wife of Velu who had raised the dispute. She had asserted that her husband had been working at Ramanujapudur Branch of the Respondent Bank from the year 1991 to May 2004 and thereafter from 07.10.2006 to the date of his termination. She does not know if her husband had worked continuously for more than 240 days in the calendar year preceding 25.01.2010.

10. Ext.M1 is the Memorandum of settlement entered into between the Respondent and the recognized union on 17.02.2011 under Section-12(3) of the ID Act in the matter of absorption of Casual/Temporary Messengers/Sweepers engaged in the different branches of the Bank. As per the terms of the settlement Casual/Temporary Messengers/Sweepers are to be absorbed in three phases. In the first phase those who have worked for more than 5 years in permanent vacancies and completed 240 or more days continuously in a calendar year as on 15.11.2010 and are still working are to be absorbed. Under Phase-II those who have worked for more than 3 years but less than 5 years

in permanent vacancies and completed 240 or more days continuously in a calendar year as on 15.11.2010 and are still working are to be absorbed, once the absorption under Phase-I is completed. Under Phase-III those who have completed 240 or more days continuously in a calendar year in permanency vacancies for less than 3 years as on 15.11.2010 and are still working are to be absorbed. Thus it could be seen from these terms of absorption that irrespective of the length of service of a person as Temporary or Casual Messenger or Sweeper, he should have continued as a worker as on 15.11.2010 which is the cut-off date and should have completed more than 240 days of work in the calendar year preceding it.

11. In the Counter Statement the Respondent has not stated during which period the petitioner had worked in the establishment though it is stated that he had not worked from 01.01.2009 to the cut-off date 15.11.2010. In Ext.M8—the order of termination of the petitioner it is stated that he is found to have worked in the Branch as Part-Time Sweeper only from 17.01.2009 to 25.01.2010 only and that his declaration that he had been working from 29.08.1991 to 31.03.2011 is found false. The termination order proceeded to state that as per the declaration made by him at the time of his absorption in the service he is liable to be terminated if the declaration made by him are found false or any of the documents submitted by him are found to be bogus.

12. Ext.W2 to Ext.W5 are the documents produced on the side of the petitioner to prove that he was working in Ramanujapudur Branch for a long time. Ext.W2 shows payment of wages in the name of the petitioner for 24 days in the year 2004. Ext.W3 is copy of a letter from the Manager stating that the petitioner was being engaged by the Branch since 29.08.1991 whenever the Part-Time Sweeper was on leave and that after retirement of the Part-Time Sweeper the petitioner was being engaged permanently from 01.06.2002. The letter requests the Chief Manager to employ him as Sweeper permanently. Then there is Ext.W4, another letter written in the year 2006, also recommending to post the petitioner as Sweeper-cum-Messenger. Ext.W5 is the certificate issued at the time when applications were called for absorption to the post of Messengers-cum-Sweepers. This also states that the petitioner was engaged from the year 1991 and continues to be engaged. Ext.W6 is the application submitted by the petitioner alongwith the certificate seeking absorption and asserting that he is still being engaged by the Branch. The petitioner was terminated from service on the basis that his claim that he was being engaged by the Branch to work and that he continued to be engaged is false.

13. To claim absorption based on Ext.M1 it is not sufficient that the concerned person was engaged by a particular branch for 5 years, 3 years or for 240 days or for any length of period for that matter. The essential condition for absorption in any case was that the person should have been continuing in service as on the cut-off date i.e. 15.11.2010 and should have worked for more than 240 days in the calendar year prior to the cut-off date. The documents produced by the petitioner, even if those are assumed to be genuine will not achieve the purpose of proving that he continued to work in the Bank at the time when he made the application. Of course there is the certificate issued by the Manager stating that he was still working there. But the Bank had found that this is not a genuine certificate. The Bank is said to have initiated proceedings against those who are involved in the scam of absorption. However, the particular Branch Manager was no more as seen from the evidence of MW1, by the time proceedings were initiated. Ext.M6 is the Investigation Report filed by the Investigating Officer regarding the service certificates issued by the different Branch Managers. The report states that the certificate issued in favour of the petitioner is a false one, that he had been working in the Branch from 17.01.2009 to 25.01.2010 only. The report further states that the petitioner had been working in the Branch for over 5 years and he had left for outside employment after entrusting the job to his sister.

14. Ext.M12 is the GL Statement produced by the Respondent to prove that the petitioner had not been working in the Branch on the cut-off date and that he had not worked for 240 days in the calendar year preceding the cut-off date also to become eligible for absorption. Ext.M12 is the GL Statement for the period from 23.12.2008 to 31.03.2011. There was not even a suggestion made during cross-examination of MW1 through whom this document is proved that it is a false one. A perusal of the document would show that it is a genuine document. It is a print-out of the GL transactions for the period referred to earlier. The cut-off date in Ext.M1 is 15.11.2010. So, to make the petitioner eligible for absorption it is necessary that he should have worked in Ramanujapudur Branch for more than 240 days during the period from 15.11.2009 to 15.11.2010 and continued to work in the establishment as on that date. A perusal of Ext.M12 gives the name of the petitioner for the first time on 17.01.2009. His name then appears only on 25.01.2010. In between payments are seen made to the Sweeper on one or two days but without the name of the petitioner. From 20.03.2010 onwards payment is seen made to one Kalpana towards cleaning charges. Payment is seen made in some other names also. The last payment in the name of the petitioner is on 25.01.2010. In between 25.01.2010 and 15.11.2009 he could not have worked for more than 240 days in any case. Again, 15.11.2010 being the cut-off date he should have been working in the establishment on this date. However, there is no evidence of his having been worked in the establishment after 25.01.2010. On the other hand the document reveals that some others had been working as Sweepers after this date. So one of the essential eligibility criteria which should have been satisfied was not satisfied by the petitioner in any case on the cut-off date. For this reason itself he was not eligible for absorption. It is true that the Bank had not produced the GL Statements of the period prior to 23.12.2008 to disprove the case that the petitioner did not work in the establishment except for some time from 1991. But even without this the petitioner could

be eliminated from the persons to be absorbed as he has not satisfied one of the essential conditions. Apparently the certificate produced by the petitioner alongwith his application was a false one. It did not reflect the actual period of his service in the Bank. He has submitted false declaration also at the time when he joined the Bank consequent to Ext.M4, the appointment order issued to him.

15. The petitioner has advanced a contention in the Claim Statement that he was terminated without issuing a Show Cause Notice and without conducting any enquiry and this is in violation of the principles of natural justice. Of course, no enquiry was conducted before the petitioner was terminated from service. There is no such case for the Respondent at all. The Respondent has justified its action on the ground that fraud having been committed by the petitioner, enquiry was not contemplated and the Bank was at liberty to terminate the petitioner from service without any such enquiry itself. It is pointed out that declaration was given by the petitioner at the time of absorption stating that if the documents submitted by him or the material furnished are found to be false he is liable to be terminated.

16. The counsel for the Respondent has referred to certain legal pronouncements in support of his argument that enquiry is not required in such cases. Reference has been made to the decision in BANK OF INDIA AND ANOTHER VS. AVINASH D. MANDIVIKAR AND OTHERS in Civil Appeal 347/2004 of the Supreme Court. In this the Apex Court has quoted the earlier decision VISHVANATH PILLAI VS. STATE OF KERALA (2004 2 SCC 105) where it was held that equity jurisdiction cannot be exercised in the case of a person who got appointment on the basis of a false caste certificate by playing fraud and that equity of compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud. Reference was also made to the decision in SUPERINTENDENT OF POST OFFICES AND OTHERS VS. R. VALASINA BABU in Civil Appeal No. 5868/2006 where the Apex Court has held that if the employee concerned had played fraud in obtaining an appointment he should not be allowed to get the benefits thereof as the foundation of appointment collapses. It was also held that in such case it will not be necessary to initiate any disciplinary proceedings against the concerned person. The counsel has also referred to the decision in DELHI DEVELOPMENT AUTHORITY AND OTHERS VS. ASHOK KUMAR in LPA 348/2004 of the High Court of Delhi in this respect. This decision referred to the earlier decision of the Apex Court in UP JUNIOR DOCTORS ACTION COMMITTEE VS. DR. B. SHEETAL NANDWANI (AIR 1999 SC 909) where the Apex Court has held that admission having been obtained by fraud, no opportunity of hearing need be given before cancelling it. Thus, it could be seen that cases involving fraud are placed on a different footing unlike in the case of termination on account of other reasons. It is a case where the petitioner had obtained a false certificate to support his claim for absorption and it was on the basis of this certificate and the declaration made by him he was absorbed in the service of the Respondent. Once it is found that the absorption was on the basis of fraud, he was liable to be terminated without the formalities of an enquiry and this has been done by the Respondent.

17. Even if the argument on behalf of the petitioner that enquiry should have been conducted before he was terminated from service is accepted the legal representatives who are now in the party array are not entitled to any relief. Sufficient opportunity had been given to them to prove that the concerned workman had been working in Ramanujapudur Branch as on the cut-off date given in Ext.M1 and had worked for more than 240 days continuously in the calendar year prior to the cut-off date. They have not succeeded in proving the same. On the other hand the Respondent had established that the concerned workman was not eligible for absorption. Therefore the petitioners are not entitled to any relief.

In view of the discussion above, the reference is answered against the petitioners. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd August, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Smt. V. Saroja
 For the 2nd Party/Management : MW1, Sri A. Arun Nehru

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Community Certificate
Ext.W2	30.11.2004	Letter from the Branch Manager
Ext.W3	15.06.2004	Letter from the Branch Manager
Ext.W4	25.10.2006	Letter from the Branch Manager

Ext.W5	05.04.2011	Certificate from Branch Manager
Ext.W6	-	Documents related to appointment of petitioner
Ext.W7	02.05.2014	Termination letter
Ext.W8	18.09.2014	Additional statement of petitioner
Ext.W9	21.08.2014	Reply statement of Respondent

On the Management's side

Ex.No.	Date	Description
Ext.M1	17.02.2011	Memorandum of Settlement under Section 12(3) of Industrial Disputes Act, 1947
Ext.M2	23.03.2011	Circular issued by Second Party Bank (Ref.No. EST/71/2010-11)
Ext.M3	05.04.2011	Undertaking/Declaration given by the First Party
Ext.M4	20.02.2011	Appointment Order issued to First Party
Ext.M5	20.12.2011	Application submitted by the First Party
Ext.M6	15.04.2014	Investigation Report filed by Investigating Officer
Ext.M7	10.04.2014	Confirmation given by the existing Branch Manager regarding non-working of First Party
Ext.M8	02.05.2014	Termination order issued to the First Party
Ext.M9	-	CBI case filed against Trade Union Office Bearer
Ext.M10	-	News published in Print Media
Ext.M11	-	Record ceased by CBI
Ext.M12	-	GL Head 7490 – Other Sundry Charges
Ext.M13	-	GL Head 7452 – Wages paid to Temporary Sweeper

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2087.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 9/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12012/138/2005-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2087.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/06) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12012/138/2005-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/9/06

Shri Niranjan Singh Nareti,
S/o Shri Chetram Nareti,
Vill Ramtilla,
Post Bijadandi, Tehsil Niwas,
Mandla (MP)

... Workman

Versus

Regional Manager,
Punjab National Bank,
Regional Office,
1227, Napier Town,
Jabalpur

...Management

A W A R D

Passed on this 12th day of May 2016

1. As per letter dated 24-2-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/138/2005-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Punjab National Bank in compulsorily retiring Shri Niranjan Singh Nareti S/o Shri Chetram Nareti, Ex-Peon/ Daftyary from service vide order dated 23-8-03/ 30-8-03 is legal and justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 4/1 to 4/5. Case of Ist party is that he was working as peon/ daftyary in 2nd party Bank. Chargesheet was served on him on 26-2-01 alleging unauthorised absence from 9-11-98 till the date of issuing chargesheet. Ist party contends that after receiving chargesheet, he submitted representation dated 29-6-01 explaining his absence submitting fitness certificate issued by Doctor. He requested permission to join service. that he was acquitted by Criminal charges by Session Judge, Shahdol on 10-7-01. He submitted application on 28-7-01 for allowing him to join duty. Workman was not allowed to join duty. He submitted representations dated 7-8-01, 10-8-01 requesting he may be allowed to join duty. The issue was taken up in joint consultative meeting dated 10-9-01. The Committee had requested management to accept joining of Ist party workman. He had received letter dated 5-9-01 for Chief Personal Manager to accept joining of Prithvipal Singh. That workman submitted his joining on 5-9-01. Letter dated 7-9-01 issued by Sub Area Manager to him. It was alleged that he was absent for considerable loss and therefore his joining was referred to Competent Authority. He submitted reply to said letter on 7-9-01. Letter dated 6-9-01 was issued by Dy.Chief General Manager. Workman was transferred to Andanand Project. Workman submitted representation for cancellation of his transfer.

3. Ist party submits that chargesheet was issued to him on 30-11-00, reply was called within 72 hours however without any reply, workman was transferred. After his arrest in criminal case, workman was suspended, he was paid 50 % wages as subsistence allowance during suspension period. He was exonerated from criminal case. Workman was deprived full wages despite he was exonerated in criminal case. In Para 10 of the statement of claim, Ist party alleged that transfer of workman is arbitrary. It appears that Ist party workman has included the multiple contentions not pertaining to the term of reference.

4. 2nd party filed Written Statement at Page 8/1 to 8/7 opposing claim of Ist party workman. 2nd party submits that unauthorized absence for period exceeding 30 days constitutes gross misconduct as per settlement. Workman Shri Niranjan Singh Nareti was appointed on 13-10-86 as peon, he was habitual absentee. He remained absent from duty for 8 years 8 months 14 days during his service of 19 years from 13-10-83 to 25-8-03. Workman was advised to mend his behavior. Showcause notice was issued to workman on 11-2-98 for unauthorized absence. Warning letter was issued to workman on 25-5-98 for unauthorized absence. As per letter dated 18-8-98, workman was directed to resume duty immediately. Workman was unauthorisedly absent despite of the letters issued by Branch Manager dated 17-8-93, 16-11-93, 11-8-00, 4-12-00. Ist party workman did not resume duty. Therefore chargesheet was served on him on 26-2-01. Reply to the chargesheet was submitted on 29-6-01. After receipt of reply to the chargesheet, workman was advised to resume duty as per letter dated 2-7-01. Again workman started absenting without intimation from 16-7-01. Vide order dated 19-7-02, it was decided to conduct enquiry against workman. Shri Akhil Johri was appointed as Enquiry Officer, Rajesh Khare was appointed as Presenting Officer. Workman was allowed Defence Representative. Enquiry was conducted time to time. Enquiry Officer submitted his report that charges against workman are proved. Considering proved charges against Ist party workman, punishment of compulsory retirement with superannuation benefit was imposed. 2nd party denies all adverse contentions of workman . Workman did not submit medical certificate covering the period of his absence. It is reiterated that during his service period, Ist party workman attended duty for 8 years one month, 26 days. As per PNB Employees Pension Regulations 1995, an employee who has rendered a minimum of 10 years of service or the date of on which he is deemed to have retired shall qualify the pension. Therefore no pension was not paid to Ist party workman. It is further submitted that Enquiry Officer has discussed about the medical certificate produced by workman. Mere submission of medical certificate cannot legalize absence. On such ground, 2nd party submits that workman is not entitled to any relief.

5. As per order dated 1-7-13, enquiry conducted against Ist party workman is held legal.

6. Considering pleadings on record and order on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of compulsory retirement imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Enquiry conducted against workman is found legal. Whether charges alleged against workman are proved from evidence needs to be decided considering the evidence in Enquiry Proceedings. Chargesheet Exhibit W-1 issued to workman pertains to unauthorized absence on different period ranging from 9-1-98 to 28-1-00. In reply to chargesheet Exhibit M-2, workman has contended that he was absent because of illness. He could not reply to the chargesheet and begged to be excused. Page 22 of the Enquiry Proceedings Exhibit M-8 shows Presenting Officer produced documents including copy of Attendance Register. The Defence Representative had requested time for going through the documents. Enquiry was adjourned. At Page 26 of the Enquiry Proceedings, Presenting Officer stated that 59 pages of Attendance Register produced shows unauthorized absence of Ist party workman. The Defence Representative did not cross examine Presenting Officer rather Defence Representative contended that the workman was suffering from illness. Since long time, he produced medical certificate. Presenting Officer explained that he had got original Attendance Register and personal file of Ist party shows unauthorized absence of workman. The period unauthorized absence shown in the chargesheet, the document is marked as Exhibit ME-1, Defence Representative explained that workman suffered from illness, he was not paid wages. Medical Certificate dated 1-7-96, 14-4-97, 27-2-98, 12-5-98, 14-7-98, 9-1-99, 25-5-99 do not cover the period of unauthorised absence shown in chargesheet 9-1-98 to 9-1-98, 26-2-98 to 28-3-98, 27-4-98 to 2-5-98, 12-5-98 to 28-8-98, 20-10-98 to 29-10-98, 31-10-98, 9-11-98 to 30-11-98, 1-12-98 to 7-12-98, 14-12-98 to 18-12-98, 4-1-99 to 9-1-99, 9-4-99 to 17-4-99, 24-4-99 to -5-99, 25-5-99 to 2-12-99, 15-12-99 to 23-12-99, -1-2000 to 6-1-2000, 10-1-2000 to 1-1-2000, 17-1-2000 to 19-1-2000 and 24-1-2000 to 28-1-2000. Bank not suffered financial loss. Copies of Attendance Register are produced. Some pages are not legible but the absence of workman has been marked on several dates. The evidence in Enquiry Proceedings cannot be re-appreciated. From the evidence in Enquiry Proceedings, charges alleged against workman are established.

Learned counsel for management Shri A.K.Shashi relies on ratio held in

Case of Delhi Transport Corporation versus Sardar Singh reported in 2004(7)SCC-574. Their Lordship dealing with misconduct absence without leave held habitual or continuous absence from duty without sanctioned leave for long, *prima facie* amounts to habitual negligence of duties and lack of interest in work .

In case between Union of India versus A.Nagamalleshwar Rao reported in AIR-1998-SC-111. Their Lordship held Tribunal cannot examine evidence produced before Enquiry Officer as an appellate court.

For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- Learned counsel for Ist party Shri Praveen Yadav during course of argument, submits that workman had explained reasons for his absence. Medical Certificates were produced. Some period of alleged unauthorized absence was overlapping, punishment was already imposed. The period of unauthorized absence shown in chargesheet is considered. Workman was unauthorized absent. Workman had not given application for leave. Punishment of compulsory retirement imposed against workman cannot be said excessive as the workman was absent from duty for much longer period in the past. Therefore I record my finding in Point No.2 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2088.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 7/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12011/66/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2088.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12011/66/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/7/2011

General Secretary,
Pratadit Karamchari Kalyan Manch,
F-1, Tripti Vihar,
Opp. Engineering College
Ujjain

Workman/Union

Versus

Branch Manager,
UCO Bank, Ghinoda Branch,
Distt. Ujjain

...Management

AWARD

Passed on this 11th day of July 2016

1. As per letter dated 5-1-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/66/2010-IR(B-II). The dispute under reference relates to:

“Whether Shri Dilip Kumar Sharma is entitled for payment of difference of wages from 25-10-89 to 10-5-97 as per Bipartite Settlement? If yes, what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wage Bank Employees Union the case of Ist party workman is that he was engaged as peon/ subordinate staff by the Branch Manager Shri N.S.Silimkar Dhinoda branch, Distt. Ujjain from 25-10-89. He was working 8 hours every day. He was continuously working more than 240 days during each of the year. He was paid wages Rs.18/- per day. Wages were paid at end of the week. His services were terminated in violation of Section 25-F of ID Act without notice or paying retrenchment compensation. Case No. R/125/99 is pending relating to termination of his service.

3. Ist party workman submits that 2nd party has entered in bipartite 5th to 7th agreement. He is entitled for scale wages as per 8th bipartite settlement. That arrears of the scale wages are paid to the temporary employees working in State Bank of India, Karur Vaishya Bank, Bank of Maharashtra. 2nd party management violated bipartite settlement which is punishable under Section 29 of the Act. On such contentions, workman is claiming difference of wages as per pay scale during the period 25-10-89 to 10-5-97 with interest.

4. 2nd party filed Written Statement opposing claim of workman. 2nd party has raised preliminary objection that Union Representative Shri Ram Nagwanshi is not competent to represent workman. The documents about registration

of Union, authorization of Union to represent the workman in present dispute are not produced. The documents about registration of Union and membership of Ist party workman are not produced. Authorization for representation by Shri Nagwanshi is not submitted, copy of registration certificate , list of office bearer, membership register, minute book, reports are not produced. It is reiterated that Shri Ram Nagwanshi is not competent to prosecute the reference.

5. 2nd party further submitted that Branch Manager has no authority to appoint any person in subordinate cadre. Engagement of Ist party was as per exigencies. Work is of contingent nature. Ist party workman engaged on daily wage basis on principles of no work no pay. Oral contracts ends after engagement on each day. Workman was never appointed as employee of the Bank, he did not continuously worked more than 240 days in any calendar year. There is no master servant relationship between parties. The disengagement of Ist party due to end of exigency cannot be termed as dismissal. It is reiterated that workman is not entitled to scale wages as per the bipartite agreements as he was not appointed following recruitment rules. The muster roll, attendance register of workman are not maintained as his engagement was intermittent. As Ist party workman was never engaged against vacant post in subordinate cadre following recruitment rules is not covered as workman under ID Act. Workman is not entitled to scale wages or revised scales as per Bipartite settlement. On such ground, 2nd party prays that reference be answered in its favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Dilip Kumar Sharma is entitled for payment of difference of wages from 25-10-89 to 10-5-97 as per Bipartite Settlement?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The term of reference pertains to entitlement of Ist party workman for pay scale as per Bipartite settlement and consequent difference of wages. Management's witness admitted 5th & 6th Bipartite Agreement W-4,5 scale wages of subordinate staff are shown. Those documents indicate that both the bipartite agreements are applicable to employees engaged on daily wages.

8. Ist party workman produced copies of his evidence in R/125/99. His evidence is devoted about his working 240 days during the period 25-10-89 to 10-5-97. He was paid wages Rs.18/- per day, wages were increased to Rs.25,65 per day. Workman had deposed in his cross examination that he submitted application to the Bank. Orally he was directed to work whole day, appointment letter was not given to him. He was paid under debit voucher. How many days he worked in a year would be seen from documents of payment of bonus. By oral order dated 10-5-97, his services were terminated, no order in writing were given to him. He was paid bonus after he had filed the proceeding. Copy of evidence of management's witness Sagarman, Pannalal in R/125/99 are also produced. As per Exhibit W-1, Ist party was paid amount of Rs.4541/-, as per Exhibit W-2, he was paid Rs.770/. Management has produced copy of recruitment policy at Exhibit M-1. Evidence on record is clear that workman was not appointed following recruitment policy, he was engaged on daily wages.

9. 2nd party filed affidavit of evidence of Ramlal covering contentions of 2nd party in Written Statement. That workman was not appointed following recruitment rules, they have been engaged as per exigency on daily wages. Workman is not entitled to get pay of sub staff cadre. In his cross examination, management's witness says during 89 to 97, he was not working in Bhinoda branch. Before preparing his affidavit of evidence he did not received information from Ex. Branch Managers. He claims ignorance how many regular sub staff were working in Bhinoda branch during 89 to 97.management's witness claims ignorance that on 25-10-89, workman was appointed as peon. He was unable to tell working days of Ist party and about documents of payment of wages. Management's witness claims ignorance how much amount was paid to Ist party workman. Management's witness reiterates that Ist party is not entitled to pay scale wages. As stated above, Exhibit W-4,5 are silent about daily wage employees are eligible for scale wages.

10. Learned counsel for 2nd party Shri Bhattacharjee made available copies of 5th & 6th Bipartite Agreement. Para 8 of 5th Bipartite agreement pertain to the part time employees. It is silent w.r.t. eligibility of casual labours engaged on daily wages were eligible for scale wages. 6th Bipartite Agreement is also silent w.r.t. eligibility of casual labours engaged on daily wages were eligible for scale wages. Ist party has not produced any rule or settlement that casual employees engaged on daily wages are entitled to scale wages as per 5th to 8th Bipartite Agreement. Therefore I record my finding in Point No.1 in Negative.

11. In the result, award is passed as under:-

- (1) The Ist party workman is not entitled for payment of difference of wages for the period 25-10-89 to 10-5-97.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2089.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 148/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12012/233/98-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2089.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 148/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 03.10.2016.

[No. L-12012/233/98-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/148/99

Shri Rajesh Dubey,
S/o Purushottam Dubey,
R/o Village Karahi,
Tehsil Maheshwar,
Distt. Khargone (MP)

...Workman

Versus

Zonal Manager,
Bank of India,
Zonal Office, MP Zone,
Bank of India Bhawan, Jail Road,
Arera Hills, Bhopal (MP)

...Management

AWARD

Passed on this 22nd day of July 2016

1. As per letter dated 26-30/3/99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/233/98/IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Zonal Manager, Bank of India in terminating the services of Shri Rajesh Dubey, S/o Purushottam Dubey w.e.f. 21-9-96 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim. Case of Ist party workman is that he was working in the Bank from July 90 to 21-9-96. He was performing clerical duties. He was paid bonus of Rs.1516.30 for the year 1995-96. Branch Manager Heeralal recommended his continuation with employment as per order dated 28-2-96 to Regional Manager Khandwa. There was clear vacancy of sub staff at branch. His services were terminated and other favourite persons was appointed in his place. Termination of his service

is in violation of Article 16,21 & 39 of the constitution. He served the Bank sincerely for six years. He was advised not to prosecute his further studies because he may be disqualified for the post of sub staff. Therefore he did not pursue his studies. It has become difficult to secure jobs. His services are terminated in violation of Section 25-F of ID Act. He was not served with notice, retrenchment compensation was not paid to him. Any chargesheet was not issued to him. His services are terminated without assigning any reasons. It is alleged to be unfair labour practice under Item 5 Schedule 10, he had filed Writ Petition No. 359/97 for restoring his constitutional rights. However Hon'ble High Court passed order dated 26-2-98 directing him to resort appropriate remedy within two months. Ist party submits that termination of his service is illegal, he prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 7/1 to 7/5 opposing claim of Ist party workman. 2nd party denied employer employee relationship. It is further contended that Ist party was not appointed by the Bank, he is not covered as workman under Section 2(s) of ID Act as he was not appointed following recruitment rules. That Ist party was even engaged as casual workman. Government has decided the disputed question while making the reference. The reference is not tenable as employer employee relationship does not exist between parties. That reference is totally misconceived. The reference is liable to be rejected. Workman is not entitled to any relief. That appointments in the Bank are governed by rules and regulations. Ist party was not sponsored through Employment Exchange. The Branch Manager has no authority to appoint sub staff. For appointment, Bank has to follow reservation policy for SC ST candidates, handicapped persons. Workman was not appointed following recruitment rules. Article 16 guarantees equality of employment. Employment Exchange is only agency. The person seeking employment in register and only appointments can be made from the candidates sponsored through Employment Exchange. Non-compliance of Government Policy amounts to deprival of stationary safeguards provided for weaker section of the society. 2nd party submits that Ist party claimants were engaged on daily wages for casual nature of job as and when required. Ist party not completed 240 days working during any of the calendar year. The wages were paid by Manager to Ist party for which he was reimbursed. Ist party has made false claim to obtain Government jobs through backdoor. There are two categories of employees in the Bank – award staff and officers employees. Services of clerks and subordinate staff are covered by various Bipartite Settlements., Sastry Award, Desai Award. For smooth customer service, Bank is required to engage any person whenever there is temporary increase in casual work. The recruitment is required to be made as per rule. It is reiterated that Ist party workman was not appointed following recruitment rules. There is no question of termination of his service, violation of Section 25-F of ID Act does not arise as Ist party workman was never appointed. He has not worked uninterruptedly during the period July 95 to 25-12-96. Payment of bonus does not confer any right to the workman. Payment of Bonus act have been enacted for different purposes. There was no question of paying haulting allowance to Ist party workman. Name of Ist party never appeared in muster roll. Termination of his service is not covered under Section 25-F of ID Act. On such ground, 2nd party prays for rejection of claim of Ist party.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Zonal Manager, Bank of India in terminating the services of Shri Rajesh Dubey, S/o Purushottam Dubey w.e.f. 21-9-96 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Ist party workman is not entitled to any relief.

REASONS

5. Point No.1 The term of reference pertains to legality of the termination of services of Ist party workman. Ist party workman filed affidavit of his evidence covering his contentions in statement of claim that his date of birth is 28-7-71. He passed 8th standard. He was engaged on daily wages as Badli peon/ hammal from July 1990 to 21-9-96. He worked more than 240 days during each of the calendar year. He was paid bonus for the year 1993-94, 1994-95, 1995-96. On 25-6-96, his pay was reduced to half. One Rajendra Singh Rajput was engaged and half of his pay was paid to Rajendra Singh. Workman submitted representation and reminder in 1996, he was paid bonus of Rs.1516, his services were terminated from 21-9-96 without assigning any reasons. Notice was not served to him. In his cross-examination, Ist party workman says he was engaged as casual employee in July 1990 by Branch Manager Mr. Mahajan, he not submitted application, post was not advertised, his name was not sponsored through Employment Exchange. Clerk Sharma was acquainted with him, he was paid wages at end of the month for his actual working days. He was paid Rs.60 per day. His signatures were obtained on voucher for payment of wages. The date of payment used to be written on voucher and his signatures were obtained on reverse side of voucher. He was unable to tell passing 8th standard. He was working as sub staff in the Bank. He claims ignorance whether work of peon and sub staff were different, regular peon was not appointed in the Bank. He was engaged as badly peon. Ist party was unable to tell for

how many days he worked in 1991. Certificate about working is not produced. Rajendra Singh was engaged after him. His half pay was paid to Rajendra Singh Rajput. He denies that when Rajendra Singh was working, he was not engaged on work. That both of them were working during the period June to Sept.96. He doesnot know about appointment of Mangilal though he was acquainted with him. He was unable to tell for how many days payment was paid to him for 1995-96.

6. Management's witness Sahibrao Gajre filed affidavit of his evideince supporting contentions in written statement of 2nd party. As per management's witness, Ist party claimant was engaged on daily wages for casual nature of job. Ist party did not work for 240 days in any of the calendar year, he was paid wages directly by the Manager from the Head-miscellaneous charges. Ist party not completed 240 days during any of the calendar year. He was not recruited by the Bank. In his cross-examination, management's witness says he was working as clerk in Karhi branch in 1990. After he joined in the Bank, Shri Rajesh Dubey was working in the branch, payment vouchers shown admitted by management's witness and marked Exhibit W-1 to W-1/5. That workman had not completed 240 days working. He was not paid any amount before termination of his service.

7. Vouchers Exhibit W-1/1 pertains to payment of Rs.94 travelling charges on 14-9-91. Exhibit W-1/2 pertains to payment of travelling charges Rs.40/-, W-1/3pertains to payment of Rs.332/- on 31-1-91. On its reverse side, endorsement is appearing about working days of 76days from December 89 to July 1990. In Exhibit W-1/4, payment of Rs.94/- for travelling charges is shown. In voucher Exhibit W-1/5, payment of Rs.44/- is shown to workman. Vouchers Exhibit W-1/1 to 1/5 doesnot pertain to payment of wages preceding 12 months prior to termination of services of Ist party. Those vouchers donot establish that Ist party worked more than 240 days during 1991 also. Ist party has not examined any co-worker, documentary evidence doesnot corroborate evidence of Ist party about his completing more than 240 days service preceding 12 months termination of his service. Ist party in his affidavit of evidence has stated that he was engaged as badly peon. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case of

MP state Agro Industries Development Corporation Ltd and another versus S.C.Pandey reported in 2006(2)SCC-716. Their Lordship dealing with claim for regularisation of casual temporary employees on completion of 240 days continuous service held only because a temporary employee completes said period of service that by itself wouldnot confer any legal right upon him to be regularized in service.

In case between UP State Warehousing Corporation versus Presiding officers and others reported in 2013-III-LLJ-213. Their Lordship held person who files a claim is required to prove his case, Industrial Dispute raised by Union burden of proof is upon union and its workers to prove their claim before Labour Court. Workers not proved that they worked for more than 240 days in a calendar yer that they are paid wages by petitioner, Labour Court erred in putting burden upon employer.

In case between Bangalore Metropolitan Transport Corporation versus T.V.Anandappa reported in 2009(17)SCC-473. Their Lordship dealing with termination of service of casual labour/ daily wager/ temporary employee- badly worker protection under ID Act is not available.

For the reasons discussed above as workman has failed to establish he completed 240 days continuous service preceding 12 months of his termination, termination of workman cannot be held in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- In view of my finding in Point No.1 termination of Ist party is not inn violation of Section 25-F of ID Act, workman isnot entitled to any relief. Incidentally I may also refer to ratio held in case of

State of UP and other versus Hind Mazdoor Sabha and others reported in 2011-LAB-I.C.4322. their Lordship dealing with claim of reinstatement with backwages by daily wager workman working for short period of 4 year. His initial recruitment was not in accordance with procedure prescribed by law. . the services terminated without complying section 6-N. their Lordship held granting relief of reinstatement with backwages was not proper.

In present case, Ist party workman has failed to prove 240 days continuous working preceding termination of his services, Ist party workman is not entitled toany relief. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2090.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 109/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12012/78/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2090.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 03.10.2016.

[No. L-12012/78/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/109/2002

Shri Sitaram Suryavanshi,
S/o Shri Dalpat Singh,
Vill & PO Bheelkheda,
Tehsil Kalapipal,
Shajapur Distt.

...Workman

Versus

Regional Manager,
Central Bank of India,
Regional Office, 6/3 Race Course Road,
Indore

...Management

AWARD

Passed on this 19th day of July 2016

1. As per letter dated 30-7-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/78/2002-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Sitaram Suryavanshi w.e.f. 14-8-2000 is justified and legal? If not, what relief is the disputant entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of Ist party is that he was engaged as sweeper on daily wages from 13-11-95 by 2nd party. He was working with 2nd party from 13-11-95 to 13-10-99 and thereafter from January 2000 to 14-8-00. He was paid wages in imaginary names. Work of peon was also extracted from him. He was working as sub staff during above said period. On 4-2-98, regular peon Raj Kumar Raikwar was promoted as clerk, the post of peon was vacant. Work of peon was extracted from him during the period 14-11-98 to 13-10-99. On 14-10-99, he was orally stopped from work. Again he was called for work in January 2000. He was working till 14-8-00. He completed more than 240 days continuous service, he is covered as employee under section 2(B) of ID Act. His services are terminated in violation of Section 25-F of ID Act, he was not paid retrenchment compensation. After termination of his service, 2nd party was not re-employed. In his place, other person was employed. Management has followed policy of Hire and Fire. The principles of last come first

go was not followed by 2nd party. That termination of his service is in violation of Section 25-F,H of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 11/1 to 11/2 opposing claim of workman. 2nd party denies that workman was engaged in different names. Ist party was engaged as daily wage casual labour as per exigencies for cleaning sweeping work. It is denied that Ist party completed 240 days during any of the year. It is denied that Ist party was engaged as peon from 14-2-98 to 3-10-99. Ist party not completed 240 days continuous service. He is not eligible to the status of regular employee. All adverse contentions of workman related to discrimination have been denied. 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Sitaram Suryavanshi w.e.f. 14-8-2000 is justified and legal?	Dispute could not be decided on merit as workman failed to participate in reference.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. The term of reference pertains to the legality of termination of services of workman. However he failed to participate in reference proceeding. The evidence of workman is closed on 22-7-14 as such the claim of Ist party workman is not supported by any evidence.

6. 2nd party filed affidavit of evidence of witness Shri M.Y.Thakur supporting contentions in Written Statement filed by the management. Evidence of management's witness remained unchallenged as Ist party was absent to cross examine the management's witness. Workman has failed to adduce evidence in support of his claim. The claim of workman cannot be accepted. Action of the management is proper and legal.

7. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2091.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू इंडिया एशरेन्स कंपनी लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 110/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-17012/34/96-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2091.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 110/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of New India Assurance Co. Ltd. and their workmen, received by the Central Government on 03.10.2016.

[No. L-17012/34/96-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/110/97**

Shri Ishwarlal Ramhariya,
S/o Shri N.P.Ramhariya,
Narsingh Gali, Ward No.1,
Hoshangabad (MP)

...Workman

Versus

Regional Manager,
New India Assurance Co.Ltd.,
Regional Office, 214, MP Nagar, Bhopal

Branch Manager,
New India Assurance Co.Ltd.,
2nd Line, Post Box No.3,
Itarsi, Hoshangabad (MP)

...Management

AWARDPassed on this 19th day of July 2016

1. As per letter dated 8-4-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/34/96-IR(B-2). The dispute under reference relates to:

“Whether the action of the management of New India Assurance Co.Ltd. in terminating the services of Shri Ishwarlal Ramhariya w.e.f. 18-11-93 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. The award dated 15-1-01 passed by my predecessor in present reference is set-aside by Hon’ble High Court in Writ Petition No. 2055/2001 on the ground that Development Officer of the Insurance Company cannot be workman under Section 2(s) of ID Act. The judgment in above cited petition was challenged in SLP No.20790/ 12 before Hon’ble Supreme Court. Their Lordship of the Supreme Court dismissed special leave petition with observation that the Tribunal shall decide the entire issue involved without being influenced by observations by observations made by High Court.

3. After receiving reference order, notices were issued to the parties. The Ist party workman submitted statement of claim. Case of Ist party workman is that he is B.Com, belong to SC, he is handicapped person with 50 % permanent disability, he was selected for post of Development Officer Grade II from 29-4-91. He was posted at Piparia under Itarsi/ Bhopal Divisional Office of the management. That one more Development Officer of the Company Shri Anil Akhepuria was also operating in Pipariya, 2 other Insurance Companies like United India Insurance Company and National Insurance Company. Were operating at Piparia having population barely 34000. That the management of 2nd party is subsidiary company to General Insurance Corporation of India carrying insurance business under the scheme known as General Insurance (Rationalisation of Pay Scales and other conditions of Service of Development Staff) Scheme 1976. The provisions of General Insurance 1975 are applicable to the Ist party workman that he was totally new to the Insurance job without having experience, he was not given training. He was instructed directly to work in the field with huge target.

4. That for the year 1991-92, he was given target of 2.25 Lakh business. That he was honestly working to achieve said target. He achieved business target of 1.69 Lakh. His business was shown 1.51 lakhs only by the Branch Manager. Enquiry revealed that since the business procured of Rs.18000/- was by way of renewal of old policies was excluded. Ist party alleged to have been given discriminatory treatment. That renewal of Certificate No.22920 by another Development Officer, Shri Anil Akhepuria through Cover Note No.46210 favouring Dayudaual Jhawar, Mr. Akhepuria was given the credit of the renewed policy as his business. Development Officer Shri V.K.Rao Code No. 134 was also given credit for similar business. That his probation period was extended by six months vide letter dated 3-7-92. He was given target of 4 lakhs for the year 1992-93. He had completed business of 2.74 Lakhs. However business of Rs.32000/- was diverted and the same was ignored showing his business only 2.42 Lakh. His probation period was again extended for six months till 9-2-93. That he had registered increase of 88 % over the previous year. That other permanent Development Officers in and around of his operation could not achieve their targets and on the contrary showed negative growth over their previous years. Shri N.C.Jain procured a business of Rs.18.60 lacs in 1992-93 and the target for 93-94 was Rs. 23 Lakhs, against which he could procure only Rs.8 Lakhs. Workman has also contented

that business of Shri R.K.Khatri, Anil Akhepuria was not achieved the targets. The evidence of Branch Manager is clear from letter dated 12-10-92 whereby the achievement of Ist party under various heads was shown Rs.4614 on Sept-92. Purposely policy No. 3145140200409 dated 4-9-92 for premium of Rs.9195/- was excluded. That though he belong to SC and suffering from permanent disability, he was discriminated by Branch Manager.

5. As per the scheme for Development Officers, percentage wise cost of workman was 11.5 % against stipulated 12.5 %. That as per clause 1.4 of Appendix, he was eligible for extension of probationary period 3 occasions but he was given extension for only two occasions. Showcause notice was issued to him on 2-7-93. Ist party given reply to it on 12-8-93. It was alleged that Ist party had failed to achieve premium target during specified period and non-recruitment of requisite member of agents. That his reply was not considered, he was not given 3 extensions to probations despite he had procured 88 % increase in business for past year. That other Development Officers Pohekhar appointed in 1990 was given 7 extensions, Shri Jatav was given 3 extensions , Gaikwad, Vipin Kumar and Prakash were given 7 extensions.

6. Ist party further submits that he had recommended names of 4 individual for appointment as agents – Gopal Prasad Malviya, Vinod Kumar Verma, Vishnu Pandey and Jagdish Prasad. The Divisional Office did not appoint those persons for some reasons not attributable to him. The delaying tactics and procedure adopted by the Branch Manager adversely affected his business for hostile attitude of the Branch Manager. That the intention was to promote Anil at his cost. It is further reiterated that he was not given training. Guidance of Branch Manager reflected from Letter dated 29-7-92 adducing him not to do public sector business cannot be said guidance. He was not given guidance in the matter of his deficiency, suggesting the remedies. Ist party had preferred an appeal against order of termination, appeal was rejected by non-speaking order. That he challenged termination of his service filing Writ Petition in High Court MP Jabalpur. In motion hearing, Hon'ble High Court observed that Ist party was workman and hence should raise Industrial Dispute. On such contentions, Ist party is alleging that order of his termination is illegal. He prays for reinstatement with backwages.

7. 2nd party filed Written Statement opposing claim of Ist party. 2nd party contends that the Ist party was employed as probationary Development Officer at Piparia. He is not covered as workman under Section 2(s) of ID Act. The reference is not tenable. Ist party was employed as probationary Development Officer, he was employed mainly in managerial and administrative capacity, his job was to develop business of the company by issuing Insurance Cover notes, Insurance Certificates and insurance policies. That normal discharge of his duties require to exercise administrative control over Insurance agents engaged by him as per the terms of employment. The duties and responsibilities discharged by Development Officer in General Insurance Industry is entirely different from duties of LIC officers in LIC. It is contented that ratio held in the case of S.K.Verma versus Mahesh Chandra reported in AIR-1984-SC-1463 is not applicable in the case. That Development Officer working in LIC are not discharging managerial/administrative responsibilities. It is reiterated that Ist party is not covered as workman under Section 2(s) of ID Act.

8. As per appointment letter dated 29-4-91, the conditions mentioned in the appointment order are he shall be on probation of one year, he shall procure minimum premium income of Rs.2.25Lakhs during his first year of service, 50 % of premium income should be from insurance other than motor insurance, he must engage atleast 6 insurance agents during the first year of service.

9. 2nd party further contends that Ist party had procured business of 1.51 Lakhs which was short by 0.74 lakhs for his target. He has not given 50 % premium income in Insurance other than Motor Insurance. His target was for Rs.1.125 Lakhs but he could give business of 0.45 lakhs only. The probation period of Ist party was extended by six months. That as per conditions of service, if Ist party failed to achieve target, his services were liable to be terminated. It is reiterated that Ist party was given posting of his choice at Piparia. Ist party failed to achieve target of business. Reply given to the showcause notice by Ist party were considered. The complaint against Branch Manager was found without substance. Other 3 ground explained by Ist party did not require consideration because of general nature. That services of Ist party were terminated by speaking order dated 8-11-93 following procedure prescribed in the scheme of 1976. That Ist party is terminated as per conditions of service as he failed to achieve business target during probation period. It is further submitted that if this Tribunal is of opinion that proper enquiry should have been conducted. Management seek permission to lead evidence. On such ground, 2nd party prays that reference be answered in its favour.

10. Ist party filed rejoinder reiterating its contentions in statement of claim.

11. Management filed rejoinder denying contentions of workman in rejoinder and reiterating contentions of management in Written Statement. That Development Officer Shri A.Akhepuria was confirmed w.e.f. 1-5-93 on completion of 5.53 lakhs against a target of Rs. 4 lakhs. The target of Akhepuria was not 7 lakhs as contented by Ist party. Ist party was given opportunity to improve his performance but as he failed to achieve the targets, his services were terminated as per the conditions of service.

12. Additional rejoinder is also filed reiterating his contentions in statement of claim.

13. Considering pleadings between the parties and order passed by Hon'ble High Court ion Writ Petition and judgment in appeal, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the Ist party is covered as workman under Section 2(s) of ID Act?	Not covered as workman.
(ii) Whether the action of the management of New India Assurance Co.Ltd. in terminating the services of Shri Ishwarlal Ramhariya w.e.f. 18-11-93 is justified?	Redundant
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

14. Whether workman is covered as workman under Section 2(s) of ID Act is kept open for decision by Hon'ble Apex Court while disposing SLP. Statement of claim of Ist party workman is that he was appointed as probationary Development Officer. He was appointed at Piparia. He was given target of Rs.2.25 Lakhs of Insurance Business in the first year. First time he was given authority to sign cover note on 4-5-92. In his cross-examination, workman denies that in the first year of his service, he was required to appoint 6 Insurance Agents. He has admitted one Insurance Agent was appointed by him and proposal for appointment of 4 agents by him- the process was delayed. Appointment order Exhibit M-1 is clear that Ist party was appointed as Probationary Development Officer in scale of Rs.1050-60-410. Ist party was required to procure minimum premium income of Rs.2.25 Lakhs.

15. Workman is defined under Section 2(s) of ID Act as-

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

- (i)
- (ii)
- (iii) who is employed mainly in a managerial or administrative capacity, or

The commentary of I.D.Act, 1947 by Y.v.Sanyasi Row and Y.Ramesh, IIInd Edition explained the legal position as a supervisor whose salary exceeds Rs.1600/- is excluded from the definition of workman. Persons whose duties are to procure business of insurance though incidentally does perform some clerical work like issuing receipts is not a workman. Duties of developing new products, as development manager is not a workman. A person who is drawing more than Rs.1600 salary is excluded from the definition of workman. Work performed by a Supervisor is quite different from the work of Manager, Managers are excluded from the definition of workman and they form a different class.

Page 68 of test book find further discussion that Court should adopt pragmatic and not a pedantic approach. Should see primary and secondary duties, the remuneration, the work, the nature of work side of the line they fall.

Evidence of workman shows that in first year of his service, he had received gross emolument of Rs.35,000/- against business target achieved of 1.51 Lakhs. It is clear that the Ist party workman received salary more than Rs.1600 per month.

16. Learned counsel for 2nd party Shri A.K.shashi submits that Ist party is not covered as workman and relies on ratio held in case of

Chauharya Tripathi and others versus Life Insurance Corporation of India and others reported in 2015(7)SCC-263. Their Lordship dealing with Development Officers working in LIC held arenot workmen under Section 2(s) of ID Act. Their Lordship have also diosussed ratio held in case of R.Suresh, S.K.Verma, Mukesh K.TYtripathi. in Para 15 of the judgment, their Lordship observed in our considered opinion, decision in R.Suresh cannot be

regarded as the precedent for the proposition that a Development Officer in LIC is a workman. In fact the judgment does not say so but Mr. Vasdev the learned counsel would submit that inferring such a ratio cases are being decided by the High Courts and other authorities.

In Para-16 of the judgment, their Lordship discussed as we find the said judgment R.Suresh has been rendered in ignorance of the ratio laid down by the constitution bench in H.R.Adyanthaya and also the principle stated by the three Judge Bench in Mukesh K.Tripathi that the decision in S.K.Verma is not a precedent and hence we are compelled to hold that the pronouncement in R.Suresh is per incuriam. Their Lordship concluded in Para 17 and held that Development Officers working in LIC are not workmen under Section 2(s) of the Act.

No contrary view is brought to my notice by learned counsel for Ist party Shri R.C.Shrivastava. the documentary and oral evidence shows that Ist party was appointed as Probationary Development Officer, it was his duty to develop Insurance Business including appointment of agents. Ist party is not covered as workman under Section 2(s) of ID Act. Accordingly I record my finding in Point No.1 in Negative.

17. Point No.2- In view of my finding in Point No.1 Ist party is not covered as workman therefore the dispute under reference could not be decided on merit. The legality of termination of service of Ist party workman under reference therefore could not be adjudicated. Accordingly I record my finding in Point No.2.

18. In the result, award is passed as under:-

- (1) As Ist party workman is not covered as workman, dispute under reference is not adjudicated on merit.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2092.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आंध्रा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 19/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12011/108/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2092.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Andhra Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12011/108/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 12th April, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 19/2016

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their workman)

BETWEEN :

The General Secretary

Andhra Bank Employees Union
227, Angappa Naicken Street
Chennai-600001

: 1st Party/Petitioner Union

AND

1. The Branch Manager : 2nd Party/1st Respondent
 Andhra Bank
 Kattukanalur Branch, Kanamangalam Village
 Tiruvannamalai District
 Tamil Nadu

2. The Zonal Manager : 2nd Party/2nd Respondent
 Andhra Bank, Zonal Office
 Chennai-600001

Appearance:

For the 1st Party/Petitioner Union : Sri K. Thamaraiselvan General Secretary

For the 2nd Party/1st & 2nd Management : In Person

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/108/2015-IR (B.II) dated 26.02.2016 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the demand of the Union in seeking regularization of the services of Sri Sakthivelu at Kattukanalur Branch from the Management of Andhra Bank is justified? If not, to what relief is the concerned workman entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 19/2016 and issued notice to both sides. The petitioner has directly entered appearance on receipt of notice.

3. The General Secretary of the Petitioner Union has filed a memo stating that the Union and the Respondent Bank have been discussing the issues and that there will be positive decision regarding the dispute shortly. It is further stated in the memo that the dispute is not being pressed for the above reason. The ID is to be decided against the petitioner in the circumstances.

Therefore, reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th April, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/1st & 2nd Party Management : None

Documents Marked:**On the Petitioner's side**

Ext.No.	Date	Description
	Nil	

On the Management's side

Ext.No.	Date	Description
	Nil	

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2093.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 59/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2093.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 03.10.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 26th August, 2016

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 59/2015 (DF)

BETWEEN :

Smt. G. Nirmala : 1st Party/Petitioner

AND

The Senior Regional Manager : 2nd Party/Respondent
 Central Bank of India
 Regional Office
 No. 48/49, Montieth Road
 Egmore
 Chennai-600008

Appearance :

For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates

For the 2nd Party/Respondent : Sri S. Ravindran, S. Bazeer Ahmad, Advocates

AWARD

This is an Industrial Dispute taken on file under 2(A)(2) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010).

1. The averments in the Claim Statement filed by the petitioner in brief are these:

The husband of the petitioner had been working as Daftary in the Respondent Bank. Consequent to his death the petitioner was given appointment as Peon in the Bank on 03.11.2004 on compassionate grounds. The petitioner had been discharging her duties honestly. She was promoted to the post of Daftary and was posted at Velachery Branch in November, 2011. While she was working at Velachery Branch she was affected by serious illness and had been admitted in the hospital. Even after discharge from the hospital she had to continue her treatment. In July 2012 she was again admitted in the hospital for removal of uterus. She was suffering from Post-Surgery health problems and had to visit hospital frequently for treatment. Because of her medical problems the petitioner had to go on long leave and could not attend duty for about 5 months since July, 2012. The petitioner had informed about the illness to the branch from time to time. She had submitted her medical leaves and claimed reimbursement of the amounts of the medical expenditure. She was reimbursed her medical expenses. The petitioner had joined duty after her health improved. The Velachery Branch Manager served memos dated 31.07.2012, 03.10.2012, 03.11.2012, 06.12.2012, 15.12.2012 and 17.12.2012 falsely alleging that the petitioner had absented from duty from the branch without submitting leave application and without informing him, and calling for explanation. All the memos were in English language with which the petitioner is not acquainted. Subsequent to the memos a charge sheet was served on the petitioner alleging

unauthorized absence from duty. As instructed by the Union of which she was a member she appeared before the Enquiry Officer and accepted the charges alleged against her. The Respondent had forwarded a copy of the enquiry Officer's report calling for her submission. She had given her submission citing her leave applications, medical certificates and medical bills she had submitted to the Respondent from time to time. In spite of this the Respondent issued Show Cause Notice to the petitioner asking her to show cause why she should not be compulsorily retired from service. The petitioner appeared before the Respondent again and explained the circumstances under which she happened to be on leave. Without accepting this, the Respondent imposed the punishment of Compulsory Retirement from service on the petitioner. There is no justification for the punishment imposed. The petitioner is entitled to be reinstated in service. An order may be passed directing the Respondent to reinstate the petitioner in service with backwages and other benefits.

2. The Respondent has filed Counter Statement contending as below:

The petitioner was working as Daftary at Velachery Branch of the Respondent. The Daftary is to do the duties such as obtaining acceptance of bills of exchange, hundies, etc. collecting payments of cheques and postal orders and several other works. Absence of a Daftary would adversely affect the functioning of the branch. From the year 2009 onwards the petitioner had been indulging in frequent absenteeism while she was working in various branches in Chennai. On 08.01.2010 she was issued memo of warning for her absence of 72 days in the previous year. In the year 2012 she was again absent from 13.02.2012 to 28.03.2012. The punishment of censure was imposed on her on account of her absence. But the petitioner again absented from duty unauthorisedly from 06.07.2012. A memo was issued to her on 31.07.2012 for the above absence. Even after receiving this memo she remained absent. Memos were sent to her on 03.10.2012 and 13.11.2012 also. Still she continued her absence. As on 03.12.2012, after her promotion as Daftary the petitioner was on loss of pay for 115 days even after availing her full leave facilities. She was absent from work without any intimation from 06.07.2012. So charge sheet was issued to her on 12.12.2012 for her unauthorized absence. A domestic enquiry was held and the petitioner has admitted the charges leveled against her in the enquiry proceedings. The Enquiry Officer submitted report holding that the charge against the petitioner is duly proved. The copy of the report was sent to the petitioner seeking her comments and she sent a reply stating that her absence was due to illness. Her reply was not satisfactory and the petitioner was awarded the punishment of Compulsory Retirement with superannuation benefits without disqualification from future employment. The appeal filed by the petitioner against this order was rejected. The averment in the Claim Statement that the petitioner had submitted leave applications and medical certificates to the concerned branch are not correct. There is no violation of principles of natural justice in the enquiry proceedings as alleged by the petitioner. When the petitioner had admitted the charge against her there was no need to prove the same by leading evidence. The petitioner is not entitled to any relief. The petition is liable to be dismissed.

3. The petitioner having contended that enquiry against her was not conducted in accordance with the principles of natural justice, the issue was considered as a Preliminary Issue and a finding was entered in favour of the petitioner. Consequently, the Respondent has tendered evidence before this Tribunal to establish the charge against the petitioner. The petitioner has also given evidence on her side.

4. The evidence in the case consists of oral evidence of MW1 and Ext.M1 to Ext.M21 and also WW1 and Ext.W1 to Ext.W13.

5. **The points for consideration are:**

- (i) Whether the Respondent is justified in imposing the punishment of Compulsory Retirement from service on the petitioner?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

6. The petitioner had been given appointment as Peon in the Respondent Bank on compassionate grounds consequent to the death of her husband who had been working as Daftary. She had joined the Bank in 2004. She was given promotion as Daftary and was posted at Velachery Branch in November, 2011. Disciplinary proceedings was initiated against her while she was working as Daftary at Velachery Branch.

7. The Respondent Bank has alleged that the petitioner had been unauthorisedly absent from duty from 06.07.2012 onwards and she had refused to report for duty even after memos were issued to her repeatedly. Ext.M4 is the Charge Sheet issued to the petitioner for her alleged unauthorized absence from duty from 06.07.2012 to 06.12.2012 for 154 days. The Respondent has produced Ext.M21—the Muster Roll showing the absence of the petitioner from duty for 154 days. It is not in dispute that the petitioner had not been attending duty for the above period.

8. The only case that is advanced on behalf of the petitioner is that absence of the petitioner from duty was not willful but she had valid reason for her absence. She has stated in the Claim Statement as well as in the Proof Affidavit

filed by her that she was suffering from illness during the period and she had to undergo a surgery and it was on account of this she was not able to attend duty during the period. Surgery for removal of the Uterus is seen done on her on 04.12.2012.

9. In Ext.M4-Charge Sheet there is no case for the Respondent that absence on the part of the petitioner was willful. The petitioner has produced documents to support her case that she was suffering from illness and she was not in a position to attend duty during the period in question. Ext.W13 is the particulars of the treatment of the petitioner which according to her prevented her from attending duty. The document shows that the petitioner was admitted at SRM Medical College Hospital on 05.11.2012 and she remained at the hospital until 14.11.2012 on which date she was discharged. She is diagnosed to be having Fibroid of Uterus. She is seen advised to do a review after 1 week. She was again admitted in the hospital on 25.11.2012 and surgery was done. Ext.W13 sufficiently establishes that the petitioner was suffering from Gynecological problems and had to undergo treatment and then a surgery, during November and December, 2012. Of course, the absence of the petitioner from the Bank started in July 2012 itself. She did not produce any documents to establish her case that her illness started even during July 2012. However, when the medical problem the petitioner was suffering as revealed from Ext.W13 is taken into account it is apparent that the illness must have started some time earlier and it was as a last resort surgery had to be done.

10. It has been pointed out on behalf of the petitioner that the petitioner had submitted all the documents pertaining to her treatment to the Bank and had claimed medical reimbursement and this was allowed also. This fact is admitted by MW1 who was working as the Manager of Velachery Branch during the relevant period. This witness has admitted during his cross-examination that the petitioner had submitted her claim for medical reimbursement and this was sanctioned by the Regional Office. The reimbursed amount was credited to the account of the petitioner at Velachery Branch. MW1 admitted that when an employee is making a claim for medical reimbursement she should enclose all the records regarding the treatment. It is MW1 who had forwarded the medical reimbursement claim of the petitioner to the Regional Office. He had stated that he had gone through the medical records before forwarding the claim to the Regional Office. He further stated that the medical records revealed that the petitioner was an in-patient and had undergone surgery. So MW1 was very much aware that the absence of the petitioner was for valid reason.

11. Of course, it is the case of the Respondent that the absence of the petitioner was unauthorized in the absence of any intimation or any leave application from her. However, there is the fact that absence of the petitioner was not a willful one, but she was constrained to be absent on account of her illness.

12. The counsel for the Respondent has referred to the decision of the Calcutta High Court in DAYANAND PASWAN VS. COAL INDIA LTD. AND OTHERS reported in 2016 LLR 775 where it was held that absence from duty by a workman without intimation to his employer is a grave and serious misconduct attracting punishment of dismissal. However, the facts of the case can be differentiated in the sense that the absence of the petitioner was not willful. The reason for the absence was a matter which should have been taken into account by the Respondent. In her submission to the Show Cause Notice from the Respondent she has referred to her illness and all the documents of her illness were with the Bank also. Still this was not considered by the Bank. Compulsory Retirement of the petitioner from service is a punishment given without taking into account these aspects.

13. The document produced by the petitioner shows some discrimination on the part of the Respondent in the matter of punishment also. Ext.W12 is the order passed by the Disciplinary Authority against a Sub-Staff on a charge for unauthorized absence for 245 days. The concerned employee had appeared before the Disciplinary Authority and had submitted that his absence was due to ill-health and certificates were produced. Accepting this contention the Disciplinary Authority had, instead of compulsory retirement with superannuation benefits, which was the proposed punishment, imposed the punishment of bringing down to a lower stage in the scale of pay. The absence of the petitioner in the present case was only 154 days. However, she was imposed with the punishment of Compulsory Retirement from service. There is no justification for the punishment when considered in the background of Ext.W12 also. The petitioner is entitled to an order in her favour.

In view of my discussion above, the Respondent is directed to reinstate the petitioner in service within 2 months of the Award with 25% backwages. In default of payment of the above amount the Respondent shall pay interest @ 7.5% per annum from the date of the Award.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th August, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Smt. G. Nirmala

For the 2nd Party/Management : MW1, Sri K. Ramasubramanian

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	23.08.2004	Xerox copy of interview letter sent to the petitioner for appointment as Peon
Ext.W2	20.10.2004	Xerox copy of call letter appointment on compassionate grounds as Sub-Staff issued by the Respondent Bank to the petitioner
Ext.W3	09.11.2011	Xerox copy of Office Order letter from respondent designating the petitioner as Daftary
Ext.W4	15.02.2013	Xerox copy of Presenting Officer's brief to the Enquiry Officer
Ext.W5	20.04.2013	Xerox copy of reply submitted by the petitioner to the Show Cause Notice
Ext.W6	29.04.2013	Xerox copy of appeal submitted by the petitioner to the appellate authority of the Respondent Bank
Ext.W7	29.04.2013	Xerox copy of letter from petitioner to the authority of the Respondent Bank
Ext.W8	03.07.2013 To 20.07.2013	Copy of Statement of Account of Cent Convenient A/c of the Petitioner
Ext.W9	19.01.2015	Xerox copy of petition filed by the petitioner before Assistant Labour Commissioner (Central), Chennai
Ext.W10	27.02.2015	Xerox copy of reply given by the Respondent Bank before the Assistant Labour Commissioner (Central), Chennai
Ext.W11	28.06.2015	Xerox copy of letter from Mrs. Shobana Sathyaranayanan to the General Manager of the Respondent Bank
Ext.W12	21.02.2015	Xerox copy of final order issued by the Respondent Bank in respect of T.E. Babu
Ext.W13	XXX	Xerox copies of Medical Reports and Discharge Summary of the Petitioner (19 sheets)

On the Management's side

Ex.No.	Date	Description
Ext.M1	31.07.2012	Notice to petitioner on her absence
Ext.M2	03.10.2012	Notice to petitioner requiring her to report for work
Ext.M3	30.11.2012	Memo to petitioner to submit explanation for absence
Ext.M4	12.12.2012	Charge Sheet to petitioner on her absence
Ext.M5	06.02.2013	Enquiry Proceedings
Ext.M6	06.02.2013	MEX-I Marked in the enquiry
Ext.M7	16.03.2013	Findings of the Enquiry Officer
Ext.M8	25.03.2013	Letter to petitioner enclosing findings of the Enquiry Officer
Ext.M9	02.04.2013	Reply to petitioner
Ext.M10	09.04.2013	Second Show Cause Notice to the petitioner proposing punishment
Ext.M11	20.04.2013	Minutes of personal hearing
Ext.M12	22.04.2013	Order of punishment of compulsory retirement issued to petitioner
Ext.M13	13.05.2013	Order of Appellate Authority rejecting appeal of the petitioner
Ext.M14	08.01.2010	Memo issued to petitioner for the absence during 2009
Ext.M15	29.03.2012	Memo to petitioner to report to Velachery Branch

Ext.M16	29.03.2012	Memo to petitioner on her refusal to do work and her Absence
Ext.M17	07.05.2012	Show Cause Notice to petitioner proposing the punishment of “stoppage of increment for a period of six months”
Ext.M18	07.06.2012	Punishment of “Censure” issued to petitioner
Ext.M19	08.06.2012	Administrative Order issued to petitioner
Ext.M20	03.12.2012	Internal communication between Velachery branch and HRD Department
Ext.M21	July 2012 to Dec. 2012	Muster Roll showing the absence of the petitioner for 154 days

नई दिल्ली, 3 अक्तूबर, 2016

का.आ. 2094.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 41/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12012/11/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2094.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12012/11/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 30th August, 2016

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 41/2015

BETWEEN :

Sri G. Balaji : 1st Party/Petitioner

AND

The Regional Manager : 2nd Party/Respondent
Indian Overseas Bank,
Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner : M/s. Kanimozhimathi, Advocates

For the 2nd Party/Respondent : M/s. K.K. Sivashanmugam, K.K. Sri Giriprasath, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/11/2015-IR (B.II) dated 19.03.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

“Whether the action of the Management of Indian Overseas bank, Chennai in respect of termination of the petitioner Sri G. Balaji, Messenger without conducting enquiry is justified or not?” If not, to what relief the petitioner G. Balaji is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 41/2015 and issued notices to both sides. Both sides had entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner was appointed as Messenger in the Respondent Bank by order dated 16.06.2012. He had joined duty at Chennai Secretariat Branch. His appointment was confirmed on 09.12.2012 after probation of six months. On 07.03.2014 the petitioner was served with a termination order sent by the General Manager of the Respondent Bank. Before termination the petitioner was not given any Show Cause Notice. The Bank has not conducted any enquiry also. The reason given for termination is very vague and contains no specific reasons. The appointment of the petitioner was confirmed after verification of all the documents and all the information furnished by the petitioner in his application. The petitioner did not give any false declaration or furnish any false information to the Bank as stated in the termination order. The petitioner has been sincere and honest during his employment. There was no reason for his termination. Before appointment as a Messenger in the regular post the petitioner had worked as Temporary Messenger in Madras Christian Branch, Tambaran and also Sriram Nagar Branch, Alwarpet. There is no justification in the termination of the petitioner. The petitioner is entitled to be reinstated in service with full backwages and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

A settlement was entered into under Section-12(3) of the ID Act on 17.02.2011 between the Respondent and the recognized union for absorption of temporary messengers/sweepers as a one-time measure subject to satisfaction of certain educational qualification and prior service conditions. The casual / temporary messengers / sweepers must have worked for 240 or more days in a calendar year as on 15.11.2010 and continued to be working to become eligible for absorption. The Respondent in pursuance of the settlement had issued circulars to all Regional Offices to bring about the absorption. The petitioner had submitted application for absorption claiming that he is eligible for the same. He had stated in the application form that he had worked for more than 240 days in the calendar year preceding 15.11.2010 in Apollo Hospital Branch of the Respondent. On the basis of the result of the interview conducted by the Regional Office the petitioner was absorbed as Messenger and was issued an Appointment Letter on 16.06.2012. This was done on the basis of the undertaking-cum-declaration given by the petitioner. On subsequent verification of the records of Apollo Hospital Branch it was found that the petitioner did not work at the Branch as Temporary Messenger at all. The declaration given by the petitioner for absorption was false. The petitioner has obtained false certificate of service in connivance with the Manager of Apollo Hospital Branch. The Bank has initiated proceedings against the Manager for giving false certificate. The application given by the petitioner for absorption was tainted with fraud and falsity. Natural justice cannot be afforded to a person who has committed fraud and misrepresentation in respect of his working period in his application. The petitioner was terminated from service by order dated 07.03.2014. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W13 and Ext.M1 to Ext.M17.

6. **The points for consideration are:**

- (i) Whether the action of the Respondent in terminating the petitioner from service is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

7. The petitioner was appointed as a Messenger in the Respondent Bank by order dated 16.06.2012. He had joined the Secretariat Branch and was confirmed in service after probation period of 6 months. The Bank has terminated his from service by order dated 07.03.2014 without issuing any Show Cause Notice and without conducting any enquiry. His termination from service is challenged by the petitioner, by the dispute.

8. The Respondent has stated in the Counter Statement that the petitioner was absorbed as a Messenger in its service on the basis of Ext.M1, a settlement entered into by it with the recognized Union regarding absorption of Sweepers / Messengers. It is the case of the Respondent that appointment order was issued to the petitioner taking into account the declaration given by the petitioner regarding his service conditions and based on an interview. It is the further case of the Respondent that on subsequent verification the petitioner was found not to be complying with the eligibility criteria provided as per Ext.M1. It is the further case of the Respondent that the petitioner has furnished false certificate regarding his period of temporary service and had also given false declaration on the eve of his appointment.

9. The petitioner has not stated anything in the Claim Statement regarding the circumstances under which he happened to be appointed as a Messenger in the Respondent Bank. He has merely stated that he was appointed by order dated 16.06.2012. He has then vaguely stated that the Respondent might have verified his service records before he was given appointment. He has added in the Claim Statement that he had worked as Temporary Messenger in Madras Christian College, Tambaram and also in Sriram Nagar Branch, Alwarpet.

10. In the Proof Affidavit filed by him the petitioner has claimed that he does not know anything about the settlement entered into between the Respondent and the recognized union. He even stated during his cross-examination that he did not file any application claiming permanency in the Messenger post. He went to the extent of stating that if any such application is seen given to the Respondent it will be a bogus one. However, he conceded that an application for absorption has been given by him. When his application which is marked as Ext.M5 was shown to him he admitted that the application was given by him and it contained his signature. Then he went on to state that the application was filled-up by him as directed by the Manager and he had enclosed all his certificates also alongwith the same.

11. Ext.M1—the Memorandum of Settlement prescribes the criteria for absorption of Temporary Messengers and Sweepers. They were to be absorbed in three phases depending on their length of service in the temporary capacity. Whatever is the length of service they should have completed 240 or more days continuously in the calendar year as on 15.11.2010 and should have been still working. Ext.M5 is the application given by the petitioner for absorption.

12. It is apparent that Ext.M5 is the application submitted by the petitioner on the basis of Ext.M2 circular issued by the Respondent to bring Ext.M1 settlement into effect. According to the Respondent it was found subsequently after appointment of the petitioner that he has furnished false information regarding his period of service as a Temporary Messenger and has obtained a false certificate. Ext.M3 contains the certificate issued by the then Manager of the Branch sating that the petitioner had worked in the Apollo Hospital Branch from 02.10.2007 and had been engaged continuously for 240 days or more in a calendar year preceding 15.11.2010 and continued to be engaged as such. However, the margin of the certificate contains an endorsement that the certificate is issued based on information only and no records are available at the Branch.

13. It is of course the case of the petitioner that he was terminated from service without any notice and without conducting any enquiry. Ext.M9 is the termination order. This shows that the petitioner was given one month's pay and allowance in lieu of the notice period. No enquiry was conducted before terminating him.

14. Ext.M5 application having been given by the petitioner for absorption it is necessarily on the ground that he is eligible for absorption as per Ext.M1. Even though enquiry was not conducted by the Respondent before termination the petitioner had enough opportunity before this Tribunal to prove his case that he was eligible for absorption. He has not stated anything specifically during his examination regarding his previous engagement. If the petitioner should have become eligible for absorption he must have been working in any of the branches of the Respondent as on the cut-off date given in Ext.M1. If his Proof Affidavit he has not stated where he was working at that time. At the same time it is clear that his claim was that he had been working in Apollo Hospital Branch. In Para-7 of his Proof Affidavit he has stated that before he was confirmed in service the fact of his working as a Temporary Messenger in Apollo Hospital Branch might have been verified. But he has not stated from which date he has started to work in the branch or whether he was still working in the branch at the time when the application was given. Though he has referred to his temporary service in Madras Christian College Branch, Tambaram and Sriram Nagar Branch, Alwarpet the period of service in these branches are also not given. His claim for absorption seems to have been made on the basis of his engagement at Apollo Hospital Branch only. On the part of the petitioner there is no evidence at all to show that he had ever worked in any of the branches of the Respondent before his absorption as per Ext.M4 order and has become eligible for absorption as per the conditions given in Ext.M1.

15. The Respondent has produced GL Statements of Apollo Hospitals Branch pertaining to the period from 01.01.2007 to 01.04.2011 and these are marked as Ext.M14 to Ext.M16. The transactions in these statements do not spell out any payment made to the petitioner as wages for his temporary service. The genuineness of these documents were not challenged during cross-examination on behalf of the petitioner. MW1 who has conducted investigation has stated during his examination that the petitioner had not worked in Apollo Hospital Branch at all. So there is nothing to show that the petitioner had worked with the Respondent to make him eligible for absorption in the Bank as per

Ext.M1. Appointment Order was served on the petitioner on the undertaking that if the information furnished by him is incorrect he is liable to be terminated from service. The petitioner seems to have got into service based upon false assertions. So there was no necessity to conduct any enquiry before his termination. The petitioner is not entitled to any relief.

In view of my discussion above the reference is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30th August, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Sri G. Balaji
For the 2 nd Party/Respondent	:	MW1, Sri V.P. Mishra

Documents Marked:

On the Petitioner's side

Ext.No.	Date	Description
Ext.W1	-	Voter's Identity Card
Ext.W2	-	Community Certificate
Ext.W3	-	10 th Standard Mark Sheet
Ext.W4	-	Transfer Certificate
Ext.W5	16.06.2012	Letter from M. Swaminathan (Assistant General Manager)
Ext.W6	25.06.2012	Tahsildar Certificate
Ext.W7	03.07.2012	Conduct Certificate
Ext.W8	04.07.2012	Conduct Certificate
Ext.W9	08.08.2012	Police Certificate
Ext.W10	29.10.2012	Chief Manager Personnel Admin. Department sent letter to Secretariat Branch
Ext.W11	07.01.2013	Cash Bills for Map Tailors
Ext.W12	23.01.2013	recommended letter for uniform materials
Ext.W13	07.02.2013	Letter for supply of uniforms
Ext.W14	12.02.2013	Cheque in favour of Map Tailors
Ext.W15	15.02.2013	Membership Application
Ext.W16	28.02.2013	Chief Manager sent letter to Indian Overseas Bank PAD Central Office, Chennai-1
Ext.W17	01.03.2013	Bonafide Certificate
Ext.W18	04.03.2013	Admission letter sent by Union
Ext.W19	11.03.2013	Confirmation letter
Ext.W20	11.06.2013	Leave Fare Concession – Encashment
Ext.W21	30.01.2014	Salary Receipts
Ext.W22	-	Details of salary particulars for bonus calculation for the year 2012-2013
Ext.W23	07.03.2014	Termination letter
Ext.W24	18.08.2014	Representation sent by the petitioner to the Assistant Labour Commissioner (Central)
Ext.W25	13.09.2014	Communication from the Assistant Labour Commissioner (Central) to the petitioner
Ext.W26	25.09.2014	Reply statement of the Respondent

Ext.W27	08.01.2015	Rejoinder for reply statement filed by the petitioner
Ext.W28	10.02.2015	Conciliation Report of the Assistant Labour Commissioner (Central)
Ext.W29	19.03.2015	Order in No. L-12012/11/2015 IR (B.II)
Ext.W30	13.04.2015	Notice from the Secretary, CGIT-cum-Labour Court, Chennai

On the Management's side

Ext.No.	Date	Description
Ext.M1	17.02.2011	Memorandum of Settlement under Section-13(3) of Industrial Disputes Act, 1947
Ext.M2	23.03.2011	Circular issued by Second Party Bank (Ref.No. EST/71/2010-11)
Ext.M3	31.05.2011	Undertaking/Declaration given by the First Party
Ext.M4	16.06.2012	Appointment Order issued to the First Party
Ext.M5	20.06.2012	Application submitted by the First Party
Ext.M6	-	Declaration of Educational Qualification given by the First Party
Ext.M7	03.02.2014	Investigation Report filed by Investigating Officer
Ext.M8	31.03.2014	Confession qualification given by the First Party to Investigation Officer
Ext.M9	07.03.2014	Termination Order issued to First Party
Ext.M10	-	CBI case filed against Mr. M. Balasubramanian
Ext.M11	-	News published in Print Media
Ext.M12	29.04.2014	Charge Sheet issued to the Branch Manager who issued false service certificate and reply received from them
Ext.M13	12.05.2015	Reply to Charge Sheet
Ext.M14	-	GL-Head 7490 – Other sundries charges from 02.01.2007 to 31.05.2011
Ext.M15	-	GL Head 7451 – Wages – Temporary Messenger from 02.01.2007 to 31.05.2011
Ext.M16	-	GL Head 7452 – Wages – Temporary Sweeper from 02.01.2007 to 31.05.2011
Ext.M17	07.03.2014	DD No. 815394874 for Rs. 12,923.95 in the name of First Party

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2095.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 71/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12011/24/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2095.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12011/24/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**Monday, the 29th August, 2016**Present :** K. P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 71/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
Indian Bank Employees Association
Ameerjan Street, Choolaimedu
Chennai-600014

AND

The Chairman & Managing Director : 2nd Party/Respondent
Indian Bank
Corporate Office
254-260, Avvai Shanmugham Salai
Chennai-600014

Appearance:

For the 1st Party/Petitioner Union : M/s Balan Haridas, Advocates
For the 2nd Party/Respondent : M/s Aiyar & Dolia, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/24/2015-IR(B-II) dated 13.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Indian bank, Chennai regarding non-regularization of service of Smt. Daivanidhi, Part-Time Sweeper on permanent vacancy and dismissal from service of Daivanidhi is justifiable or not? If not so to what relief Daivanidhi is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 71/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed a rejoinder in answer to the counter statement.

3. The averments in the Claim Statement in brief are as below:

The petitioner is a Union registered under the Trade Unions Act and has substantial following among the workmen of the Respondent Bank. Daivanidhi, the workman concerned in the dispute has been working as Temporary Part-Time Sweeper in Kellys Branch of the Respondent Bank for the past 15 years. Recently one Permanent Part-Time Sweeper was posted to Kellys Branch by way of transfer. This resulted in loss of continuous employment for Daivanidhi. She is now working as Temporary Part-Time Sweeper whenever Permanent Part-Time Sweeper is on leave. Her services are utilized for toilet cleaning and sundry works also. Daivanidhi had started working in the Respondent Bank for daily wages at the rate of Rs. 15/- per day. After 15 years she was earning at the rate of Rs. 50/- per day. She used comes to the Branch at 0930 hrs. in the morning and do whatever work that was entrusted to her. She used to leave the branch by 1130 hrs. in the morning. She again came to the Branch at around 0300 PM and cleans the premises and do whatever work that was given to her by the Branch Manager and other Officers. She was working almost 5-6 hours daily in the Branch. Now after 15 years of working the petitioner is without any considerable income since a Part-Time Sweeper had joined the Branch on transfer. The dispute is raised accordingly. An order may be passed directing the Respondent to absorb Daivanidhi in its service and thus render justice.

4. The Respondent has filed Counter Statement contending as below:

The reference itself is bad in law. Daivanidhi was engaged as a Daily Wager for the purpose of cleaning the premises on casual and hourly basis. Her engagement was restricted to cleaning the toilets only on a daily basis and that too for a limited period. She herself had ceased from coming to the Bank. So there was no question of dismissal of Daivanidhi from service. Daivanidhi was not engaged for any other duties other than cleaning the toilets. It is not correct to state that Daivanidhi was engaged by the Bank for the last 15 years. Her engagement was restricted to half-an-hour a day from 0530 PM to 0600 PM and that also for limited days. After the posting of Permanent Part-Time Sweeper she was engaged for cleaning toilets only. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the averments in the Counter Statement and also reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and WW2 and also documents marked as Ext.W1 to Ext.W5. No oral or documentary evidence were adduced on the side of the Respondent.

7. **The points for consideration are:**

- (i) Whether Daivanidhi the concerned worker is entitled to reinstatement and regularization as claimed?
- (ii) What, if any are the reliefs to which Daivanidhi is entitled?

The Points

8. The concerned workman, Daivanidhi was not treated by Almighty as a nidhi, contrary to what the name suggests. She had to bear all the hardships of the world and had ended in working as a Sweeper, that also as a casual sweeper, in the Respondent establishment to earn her livelihood. It is the case of the Petitioner Union who had raised the dispute on behalf of Daivanidhi that she had been working continuously for years and years in Kellys Branch of the Respondent as a Sweeper but she was turned away from the job when someone was transferred to the Branch and the new person started to work as the Part-Time Sweeper. According to the petitioner, now Daivnidhi has to satisfy herself with the pittance of job at Kellys Branch of the Respondent whenever the newcomer is on leave and cleaning of the toilets. The case is that she was doing the work of the Part-Time Sweeper on permanent vacancy before someone came and took charge by transfer.

9. There is no case for the Respondent that Daivanidhi, the concerned workman had not been working in the Bank at all. The case that is advanced is that Daivnidhi was engaged as a daily wager for cleaning the premises on casual and hourly basis and her engagement was restricted to cleaning the toilets only on daily basis and that also for a limited period, though the case looks contradictory in the sense that cleaning of the premises should take in the cleaning of the entire premises of the Bank while cleaning of toilets would mean that she was doing that job only. In any case there is sufficient indication in the Counter Statement itself that Daivanidhi was working in Kellys Branch of the Respondent establishment for doing the cleaning work.

10. The General Secretary of the Petitioner Union has given evidence to substantiate the case. It is there in the Proof affidavit filed by him that Daivanidhi had been working as Temporary Part-Time Sweeper in Kellys Branch for the past 15 years and there was no Permanent Part-Time Sweeper in the pay-roll of the Branch. It is further stated that on 20.10.2013 one Kala, a Permanent Part-Time Sweeper was posted at Kellys Branch by way of transfer and this resulted in loss of employment to Daivanidhi. However, WW1 does not have any direct knowledge regarding the service of Daivanidhi. His evidence is based on documents only.

11. Daivanidhi herself has been examined as WW2. She has stated that she had worked in Kellys Branch as Temporary Part-Time Sweeper for 15 years and she lost the job when a Permanent Part-Time Sweeper came and joined the Branch on 20.10.2013 by way of transfer. She has further stated that initially she was paid at the rate of just Rs. 15/- per day and after toiling for 15 years in the Bank now a stage has come when she was receiving wage at the rate of Rs. 50/- per day, until she lost the job. According to her, she used to reach the Branch by 09.00 AM in the morning and do whatever job given to her by the Branch Manager. She was taking Xerox copies, she was buying tea and snacks for the superiors and was attending to such other small work that was entrusted to her. She used to leave the Branch by 11.30 AM in the morning. Then she will reach the Branch again at 03.00 PM in the evening, clean the premises and do whatever work given by the Officers and wait till 06.30 PM before she left the place. Thus according to her she was working almost 5-6 hours daily. She was paid wages on weekly basis and the Bank has been crediting the wages to her account maintained at Kellys Branch itself.

12. Apart from the oral evidence given by the concerned worker herself there is the documentary evidence Ext.W4, the extract of the Savings Bank Account maintained by Daivanidhi at Kellys Branch to prove the employment. The account is seen opened on 04.09.2003. The case of the worker is that the Bank had been crediting wages in her account. The document is intended to establish this case. Until 25.07.2005 there is no indication that the Bank had been

crediting any amount to the account towards wages. The deposits are seen made by cash. However, from 25.07.2005 onwards remittances are seen made in the account by the Bank under various heads such as salary, gardening, toilet cleaning, sweeping, etc and in some cases even by giving the name of the workman. After 25.07.2005 three remittances are seen made on 02.08.2005 under different heads such as garden cleaning, toilet cleaning and sweeping, all at the rate of Rs. 150. After remittance of Rs. 150 on 25.07.2005 there is remittance of Rs. 450 on 02.08.2005. After this, remittance is made on 11.08.2005 towards Sweeping charges and the amount is Rs. 150. The next remittance amounting to Rs. 275 is on 24.08.2005 and then there is remittance of Rs. 450 on 05.09.2005. Such remittances are seen made throughout thereafter on intermittent dates, with variation in the amount, probably depending upon the number of days worked. The extract of the statement is for the period upto 21.04.2014. The last remittance seen made is Rs. 860/- towards toilet cleaning on 29.03.2014.

13. The flimsy argument that has been advanced on behalf of the Respondent is that the remittances in Ext.W4 are not proved to have been done by the Bank, but it is very much possible that Daivanidhi herself made the remittances under different heads. Without doubt this is an argument which can be rejected outright. The Bank could not be expected to make such entries at the instance of the concerned workman to its own detriment. The only assumption to be made is that the remittances were made by the Branch towards the wages payable to the concerned workman for cleaning the premises and that the remittances were made under different heads to the whims and fancy of the particular staff who was making the entry or with intention to give a cover to the exact nature of the work done by the concerned workman.

14. The case of the petitioner, as already stated, is that the permanent Part-Time Sweeper had taken charge on 20.10.2013 and this has resulted in loss of employment to Daivanidhi. It is the further case that even thereafter she had been doing the work of cleaning the premises whenever the new person was on leave and she was cleaning the toilet regularly also. The entry in Ext.W4 justifies this case of the petitioner. It could be seen from Ext.W4 that even after 20.10.2013 payments were made to Daivanidhi by remittances in her account and these were mostly for toilet cleaning while there are some entries for cleaning of the office also.

15. Exct.W5 also has been produced on the side of the petitioner to substantiate the case that Daivanidhi had been working in the Kellys Branch for several years continuously. Ext.W5 is a letter written by the branch Manager of Kellys Branch to the Zonal Office General Manager of the Bank. The letter states that the concerned workman had been working in the Branch even earlier to 2000 and was still working on 10.12.2012 on which date the letter was written. Of course, the document is not proved in the strict sense in so far as the author of the letter is not examined and the authenticity of the same is not established. However, this letter when considered alongwith Ext.W4 is an indication of the factum of the work done by Daivanidhi in the Branch.

16. The counsel for the petitioner has pointed out that the Respondent has not tendered any evidence controverting the case of the petitioner. He has argued that the petitioner has put forth whatever evidence is available and thus had discharged the burden of establishing that Daivanidhi had been continuously working with the Bank for several years. According to him, once the initial burden has been discharged by the petitioner the burden has shifted on the Respondent to prove that the facts asserted by the petitioner are not proved.

17. The counsel for the petitioner has relied upon the decision in KANPUR ELECTRICITY SUPPLY CO. LTD. VS. SHAMIM MIRZA reported in 2009 1 SCC (L&S) 70 to support his argument that the petitioner has sufficiently discharged the burden of proof that lies upon it. In the above decision the Apex Court has held :

It is trite that the burden to prove that a claimant was in the employment of the particular Management primarily lies on the person who claims to be so, but the degree of proof so required varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the Management.

It is true that in the instant case the workman did not produce the letters of appointment as also the salary slips but they have been successful in adducing some contemporaneous documentary evidence including ECR sheets bearing the signature of the workman and that of another senior officer of the Appellant Company which shows that they were collecting cash on behalf of the Appellant and; depositing it in the Bank or Central Office of the Appellant and were answerable to the officials of the Appellant.

The Apex Court has further observed that:

The workman has also placed on record a certificate issued by the Assistant Engineer certifying that he had worked at the Collection Office in the capacity of a Cashier w.e.f. 13.06.1995 to 31.08.1996 with honesty and hard labour and other than this he had also done a good job on his directions at other places. The stand of the Appellant on the said certificate was that this Assistant Engineer was not competent to issue such a certificate. Be

that as it may, the said document does show that the workman did work with the Appellant even prior to the award of the contract to M/s Vivek and Associates.

Reference was also made to the decision in DIRECTOR, FISHERIES TERMINAL DEPARTMENT VS. BHIKUBHAI MEGHAJIBHAI CHAVDA reported in 2010 1 SCC 47 in this respect. Here also the Apex Court has held:

The Respondent was a workman hired on a daily wages basis. So it is obvious that he would have difficulty in having access to all the official documents, muster rolls, etc. in connection with his service. He has come forward and deposed. So in our opinion the burden of proof shifts to the Appellant Employer to prove that he did not complete 240 days in the requisite period to constitute continuous period.

The petitioner having discharged the initial burden to prove that Daivanidhi had worked with the Respondent for several years the burden has shifted to the Respondent to prove otherwise. The Respondent has not discharged the burden. So the case of the petitioner is to be accepted.

18. There is no doubt that the concerned workman was turned out from her job without complying with the conditions provided under Section-25F of the Industrial Disputes Act. There is no case for the Respondent that any notice was given before the workman was turned out from the work she was so far doing. Several decisions of the Apex Court holding that in such cases reinstatement is the remedy has been referred to by the counsel for the petitioner. Reference was made to the decisions HARJINDER SINGH VS. PUNJAB STATE WAREHOUSING CORPORATION reported in 2010 3 SCC 192, RAMESH KUMAR VS. STATE OF HARYANA reported in 2010 1 SCC (L&S) 420, ANUP SHARMA VS. EXECUTIVE ENGINEER, PANIPAT reported in 2010 5 SCC 497 and DEVINDER SINGH VS. MUNICIPAL COUNCIL, SANAUER reported in 2011 6 SCC 584.

19. As per the schedule of reference the petitioner has been challenging not only denial of job but is also claiming regularization of service in the Respondent establishment. According to the counsel for the petitioner once it is established that the petitioner has been working in the establishment for several years she is entitled to be reinstated in service and also to be regularized. The counsel has referred to the decision in MAHARASHTRA STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGATHANA reported in 2009 2 SCC (L&S) 513 in this respect. In this case the Apex Court has explained UMA DEVI case (2006 4 SCC 1) which deprecated the issuance of directions by Courts for regularization for making the temporary or casual employees permanent on the ground that such a person has worked for a considerable length of time. The Apex Court has observed:

Uma Devi is the authoritative pronouncement for the proposition that the Supreme Court (Article-32) and the High Courts (Article-226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

Uma Devi does not denude the Industrial and Labour Courts of their statutory power under Section-30 read with Section-32 of MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item-6 of Schedule-IV where the posts on which they have been working exist. Uma Devi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section-30 of MRTU and PULP Act once unfair labour practice on the part of the employer under Item-6 of Schedule-IV is established.

20. The counsel for the petitioner has also referred to the decision of the Apex court in HARINANDAN PRASAD AND ANOTHER VS. EMPLOYER I/R TO MANAGEMENT OF FCI AND ANOTHER reported in 2014 (2) LLN 564 (SC) in this respect. In this the Apex Court has held on its scrutiny of the case of U.P. POWER CORPORATION (2007 (5) SCC 755) and BHONDE's case (2005 4 LLN 40 (SC) as below:

In UP Power Corporation this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Article-14 of the Constitution on which judgment in Umadevi is primarily founded. In Bhonde's case the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court / Industrial Court to grant certain reliefs to the workmen which include the relief of giving status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Uma Devi's case. It is clear from the reading of the judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent posts even when available and continuing to engage workers on temporary / daily wage basis and taking the same work from them and making them do the work which were performed by the regular workers but paying them less wages.

It was further observed with reference to MAHARASHTRA STATE ROAD TRANSPORT CORPORATION case:

We are conscious of the fact that the aforesaid judgment rendered under MRTA and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal / Labour Court by the said Act. At the same time it also hardly needs to be emphasized that the powers of Industrial Adjudicator under the Industrial Disputes Act are equally wide. The Act deals with Industrial Disputes, provides for conciliation, adjudication and settlements and regulates the rights of the parties and the enforcement of the awards and settlements. Thus by empowering the adjudicator authorities under the Act to give reliefs such as reinstatement of wrongfully dismissed or discharged workman which may not be permissible in common law or justified under the terms of the contract within the employer and such workman, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

Thus the power under Industrial Disputes Act is wide and the industrial adjudicator has the power to grant suitable reliefs including regularization in circumstances requiring it.

21. It has been pointed out on behalf of the Respondent that the concerned workman, in any case was working only as a Daily Wager and was not given consolidated wages accepting her as a Temporary Part-Time Sweeper and therefore she would not be entitled to the relief of regularization. As stated in the case referred to earlier, even in the case of daily wagers regularization can be made provided the other conditions are satisfied. Item-10 of 5th Schedule of ID Act states that to employ workman as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent workman is an unfair labour practice. The petitioner, even as proved by Ext.W4 has worked in Kelly's branch of the Respondent Bank for more than 8 years. Still she was getting just a nominal amount as wages. What she has stated in her evidence is that even earlier she was working in the Bank but for the first 5 years the practice was to pay her directly and only later they started the practice of remitting wages in her account. If this is the case she had worked with the Bank for a longer period. The statement in Ext.W5 by the Branch Manager that she had been working in the Branch even earlier to 2000 must be correct. Thus it is a clear case of the Bank having been employing the petitioner as a casual employee and retaining her in the same position for years without giving her any privilege. This amounts to unfair labour practice. In such circumstance the petitioner is entitled not only to be reinstated but also to be regularized in the service of the Respondent.

22. The counsel for the Respondent has referred to the decision in MUKAND LTD. VS. MUKAND STAFF AND OFFICERS ASSOCIATION in Civil Appeal No. 5601/2001 dated 10.03.2004. However, it is a case where it was held that the Tribunal is not entitled to adjudicate matters not within the purview of the dispute and also that it has no jurisdiction to entertain and decide a dispute regarding persons who are not workmen. In the dispute on hand this Tribunal is not going beyond the purview of the reference. There is no question of the concerned workman not coming under the term "Workman" as defined in Section-2(s) of the Industrial Disputes Act. The definition is wide enough to take within its ambit even casual labourers.

23. The counsel for the Respondent has also referred to the decision in RAJ KUMAR VS. JALGAON MUNICIPAL CORPORATION in Civil Appeal No. 855/2013 dated 01.02.2013. It is a case where daily wagers were given compensation rather than the relief of reinstatement. Compensation was ordered in that case in view of the particular circumstances of the case. In the present case, the workman has been working in the establishment continuously as a Daily Wager for several years. She was turned out from work when a transferee came and assumed the position. Apparently the petitioner was working in a sanctioned post resulting in her losing the job. The transferred employee had come and joined the post. There is no case for the Respondent that the concerned workman is not eligible for the post as per the Recruitment Rules. Such rules, if any is not produced. It is not an illegal engagement. So regularization will not amount to backdoor entry in violation of Article-14 of the Constitution also. So the concerned workman is entitled to be regularized. It will be proper to give regularization from 18.07.2014 the date on which the dispute was raised.

24. In view of my above discussion an award is passed as below:

The Respondent is directed to reinstate Daivanidhi in service as Part-Time Sweeper and regularize her within two months of the publication of the Award. She will be deemed to have been regularized with effect from 18.07.2014 and will be entitled to have all the benefits of a regular employee from that date with backwages restricted to 25% payable with interest at the rate of 7.5% per annum.

The reference is answered accordingly.

(Dictated to the PA transcribed and typed by him, corrected and pronounced by me in the open court on this the 29th August, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri K. Krishnan
WW2, Smt. N. Deivanidhi

For the 2nd Party/Management : None

Documents Marked :**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	18.07.2014	Letter by the Petitioner Union IBEA/GEN/42/2013-16 to ALC, Chennai regarding regularizing the services of Smt. Deivanidhi as Permanent Part-Time Sweeper
Ext.W2	07.11.2014	Indian Bank Management's reply to the above letter
Ext.W3	24.02.2015	Petitioner Union rejoinder
Ext.W4	-	Extract of SB Account No. 400645161 in Kelly's Branch of Smt. Deivanidhi for 10 years.
Ext.W5	10.12.2012	Letter of the Branch Manager alongwith details of Casual Labour and copy of the Ration Card

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 3 अक्टूबर, 2016

का.आ. 2096.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 33/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.10.2016 को प्राप्त हुआ था।

[सं. एल-12011/105/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 3rd October, 2016

S.O. 2096.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, received by the Central Government on 03.10.2016.

[No. L-12011/105/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Friday, the 22nd August, 2016

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 33/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Canara Bank and their workman)

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
Canara Bank Staff Union
27, VV Koil Street
Vellala Teynampet
Chennai-600086

AND

The Dy. General Manager : 2nd Party/Respondent
Canara Bank, Circle Office
No. 524, Anna Salai
Chennai-600018

Appearance:

For the 1st Party/Petitioner Union : Sri Ashok B. Shenoy, Advocate
For the 2nd Party/Respondent : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/105/2014-IR (B.II) dated 09.03.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the Management of Canara Bank, Chennai regarding outsourcing of core functions and other IT related activities at clearing operations, CTS Grid, Chennai is justified or not? If not, to what relief the workers are entitled?”

2. After receipt of the Industrial Dispute this Tribunal has numbered it as ID 33/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner are as below:

The Petitioner is a Trade Union of Workmen employed in the Respondent Bank. The core functions of the Bank including “data capture” related to clearing instruments at Chennai CTS Grid run by the Respondent was all along being handled and discharged by the workmen employed in the Accounts Section of Local Processing Cell of the Respondent. Since April, 2013 the Respondent had sought to outsource the aforesaid core functions and works of data capture related to clearing instruments at Chennai CTS Grid to outside agencies. The Respondent has issued tender notices dated 25.04.2013 inviting tenders for outsourcing the works to outside agencies. The works sought to be outsourced pertain to both outward and inward clearing of instruments such as scanning of cheque deposit challan and cheques, data entry/data capture of details like account number and amount, data capture entry of cheque and demand draft details like account number and demand number respectively, date and payee name based on the instrument image, etc. All the above works are regular and core functions which were so far done by the workmen of the Respondent. The action of the Respondent in seeking to outsource the core functions is illegal and unjust. It is being resorted to in violation of Section-9A of the Industrial Disputes Act. It is in violation of the provisions in Clause-31 of the 8th Bipartite Settlement dated 02.06.2005 also. It is unfair labour practice as defined in Section-2(ra) of Industrial Disputes Act. The Respondent is to ensure retention of the existing staff and has to develop in-house competencies and not seek to outsource the works for discharge of which in-house capabilities is very much available. An award may be passed declaring that the action of the Respondent seeking to outsource the core functions and other IT related activities including data capture works related to clearing instruments at Clearing Operations, CTS Grid, Chennai is illegal and unjust, direct the Respondent not to outsource the core functions and other IT related activities and also restrain the Respondent from outsourcing the said functions.

4. The Respondent has filed Counter Statement contending as below:

The operations done at CTS Grid i.e. Data Capture / Entry Work related to clearing instruments are not core functions of banking. The activities at CTS Grid only facilitates fast and better customer service. The RBI, has by its circular dated 03.11.2006, given the guidelines on managing risks and code of conduct in outsourcing of financial services by the Banks. The guidelines only states that the Banks who outsource financial services should not outsource core management functions including internal audit, compliance function and decision making function like determining compliance with KYC norms for opening deposit account, according sanction for loans and management of investment portfolio. On the basis of this the Respondent has issued its outsourcing risk management policy. A

reading of Clauses 31 (G) and (H) of the 8th Bipartite Settlement would show that CTS operation is not a core function and nothing prevents the banks from outsourcing IT and related activities. Earlier the banks in a particular station used to meet in a common place called clearing house where they used to exchange their cheques based on which a statement was being prepared as what is due and what is payable by each bank to every other bank. This was called Clearing House Operation. Consequent to technological changes the need for common clearing operation house ceased. Now it is replaced by National Payment Corporation of India (NPCIL), an independent agency floated at the instance of RBI and identified as the implementing agency of Cheque Truncation System (CTS). By this system the image of the instrument is transmitted to the Bank on which the instrument is drawn by scanning through NPCIL. Outward cheques will be transmitted during the day itself. Inward cheques will be received only between 0900 PM and 0930 PM. The receiving bank will enter the account number of the drawer and payee's name in the system. An Officer will verify these entries. These works are to be completed and uploaded to the Core Banking System before commencement of the business hours in the next day morning. CTS in the Respondent Bank is established at three centers viz. Chennai, Mumbai and Delhi. About 60,000 cheques are received daily at Chennai Centre and they have to be processed between 0900 PM and 0500 AM of the following day. The Chennai Centre was started in September 2011 and it became fully operational in March 2012. At present CTS operations are done only by the employees who are in the rolls of the Bank. The CTS Centre will have only 7 holidays in a year while the employees doing clearing operations under NPCIL are eligible for 14 or 15 holidays in a year. Asking the employees to come and work on night shifts on holidays creates tension. So far as incoming cheques are concerned rejections are to be informed before 0130 PM on the next day. For all these reasons the banks are going for outsourcing activity. When the CTS system was introduced and employees were asked to opt for the same only 17 Clerical staff opted and on an average only 12 turned up. So the Respondent has decided to entrust the activity to an outsourcing agency. With the emergence of new generation banks with wide range of products, nationalized banks are facing severe competition. So banks like the Respondent have to device new ways and means for improving the performance and contain the cost of operation in its endeavour to render more satisfactory service to the customers. Clause-31-h of the 8th Bipartite Settlement is not intended to put fetter on the banks march towards advancing for growth. The Canara Bank Employees Union which represents 71.6% of the workmen employed by the Bank is the sole negotiating agent to represent the Award Staff in the Respondent Bank. The proposal for implementation of outsourcing the CTS was discussed in the Board of Directors Meeting in which the representative of the recognized union is a member. So it is to be inferred that it was not opposed by anyone other than the Petitioner Union. The Petitioner Union has got only 7.6% of membership of workmen and has no *locus-standi* to seek intervention in the matter. Outsourcing the CTS activity is not among the items listed not to be outsourced by the RBI circular. There is no violation of Section-9A of the ID Act as no change in the usage arises, as the concept itself is new. Outsourcing is not an unfair labour practice. The petitioner is not entitled to any relief.

5. The Petitioner has filed a rejoinder in answer to the Counter Statement denying the averments in the same and also reiterating its case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M9.

7. The points for consideration are :

- (i) Whether the action of the Respondent regarding outsourcing of core functions and related activities at Clearing Operations, CTS Grid, Chennai is justified?
- (ii) What, if any, is the relief to which the petitioner is entitled?

The Points

8. The issue that comes for consideration is whether outsourcing of the work done at Clearing Operations, CTS Grid of the Respondent at Chennai by its own workmen is proper, legal and justified.

9. There is no dispute regarding the nature of work that is done at the CTS Grid. This is a system that has replaced the Clearing House which was in existence before advancement of technology. Earlier the employees of all the Banks of a particular centre used to gather at the Clearing House housed in the State Bank of India premises and exchange their cheques and prepare a statement regarding what is due and payable by each bank to every other bank. This system ceased after technology became more advanced. Instead of Clearing House, an independent agency by name National Payment Corporation of India (NPCIL) was floated at the instance of Reserve Bank of India. Now the branch of any bank to which the cheques are presented for clearing will transmit the images of those cheques by scanning through NPCIL. Outward cheques will be transmitted during day time while inward cheques will be received between 0900 PM and 0930 PM. Then the receiving bank will enter account number of the drawer in the system alongwith the payee slip. The entries will be verified by an Officer. After this they will be uploading therewith the Core Banking System before commencement of the business hours in the next day.

10. The work at CTS Grid of the Respondent at Chennai was started in 2011 and was made fully operational in 2012. So far the work at the Centre was being carried out by the workmen of the Respondent itself. WW1, the General Secretary of the Petitioner Union has stated during his cross-examination that the grid roughly handles 60,000 instruments each day. 17 employees of the Respondent were deployed at the CTS Grid for CTS functions. WW1 has stated that the services of 30 employees are required for this function. He also stated that at present there are only 12 employees for the function and they have difficulty in handling so many instruments.

11. The Respondent had invited tender for outsourcing the functions of the CTS Grid. It was at this instance the petitioner has come forward stating that the action of the Respondent is in violation of Section-31-h of the 8th Bipartite Settlement, without compliance with Section-9A of the Industrial Disputes Act and also against the guidelines given by the Reserve Bank of India in the matter insofar as what is being sought to be outsourced by the Respondent is a core function of the Bank. The Respondent has met these allegations in its counter statement stating that the activities at CTS Grid are not core functions of the Bank, that it is a IT related activity for which provision is made in the 8th Bipartite Settlement, that so far as it is a new concept, there is no violation of Section-9A of the ID Act and also that the Respondent is forced to do it also because its own staff were not cooperating with the functioning of the CTS Grid, that they have not opted for the post in the Grid even if option was given to them and since there are only less number of persons at the Grid error is bound to happen and this will affect the Respondent adversely. It is also stated by the Respondent that the petitioner being a Union with only 7.6% membership among the workmen of the Bank, it has no *locus-standi* to raise the dispute at all.

12. It is common case of the petitioner as well as of the Respondent that core functions of the bank cannot be outsourced. However, the petitioner asserts that the works at CTS Grid are core functions while the Respondent would state that they do not come under the term “core function” at all. The Respondent has produced Ext.M1, the RBI circular dated 03.11.2006 giving the guidelines on managing risks and code of conduct in outsourcing of financial services by banks. While referring to these guidelines it has been pointed out by the Counsel for the Respondent that the guidelines of the Reserve Bank of India are statutory in nature. This aspect is not disputed by the other side also. The only aspect to be considered is whether the function of the CTS Grid comes under the core functions as intended by the Reserve Bank. Clause-2 of the guidelines states about the activities that should not be outsourced. The Clause states that banks which choose to outsource financial services should not outsource core management functions including internal audit, compliance function and decision making functions like determining compliance with KYC norms for opening deposit accounts, according sanction for loans and management of investment portfolio. The argument that is being advanced on behalf of the Respondent is that the specific items referred to above only are exempted from being outsourced. However, it could be seen on reading of the clause that the items given are only illustrative and those functions which are the very basis for the working of a Bank. It is clear from the clause that there are other functions of the Bank also that are to be treated as core functions and that is why the word “including” is given in the clause. So it is a matter for adjudication whether the functions now done at CTS Grid are core functions of the Bank.

13. In the above background it has become necessary to elaborate what actually are the functions that are carried out at the CTS Grid. It is clear from the very contention in the Counter Statement that the act done at the CTS Grid involved an element of decision making also. The cheques that are presented at a particular bank for collection will be scanned and its image will be transmitted through the NPCI. These images will be captured at the CTS Grid. The workmen who are working at the Grid will be viewing these images and they will be entering the account number and also the payee’s name. The verification part is said to be done by the concerned Officers. The stand of the Respondent is that because the act of the workmen concerned at the CTS Grid involves visualizing the image and entering the account number and payees name only in the system it is not a core activity of the Bank. It is not disputed by the Respondent that the entire work of verifying a cheque and deciding to make payment is a core banking activity. What is attempted to be done is truncating this work and stamping one part as core activity and stamping another part as non-core activity. There is impropriety in this itself. The activities are to be treated as a whole to decide whether it is a core activity or not. Certainly, there is risk in the sense that the number is to be noted properly and the name of the payee also should be entered properly. The counsel for the petitioner has referred to Clause-4(i) of Ext.M1 which states that the outsourcing of any activity by bank does not diminish its obligations and those of its Board and Senior Management who have the ultimate responsibility for the outsourced activity. It states that Banks will be responsible for the action of the service provider. If that is the case the work done by the workmen could not be said to be a non-core function. During cross-examination of WW1 it was attempted to bring out that in case error is committed by the employees at the CTS Grid, loss is not recovered from the employee but at the same time outsourcing agency which are already functioning in other Banks are indemnifying the loss in such cases. This itself would show that it is a core activity. So there is no substance in the argument that the work at CTS Grid which is attempted to be outsourced is not a core function.

14. Even assuming that it is not a core function of the Bank, in the normal course, the Respondent is not entitled to outsource the same in view of the provisions of the 8th Bipartite Settlement. Clause-31-h of the 8th Bipartite Settlement states that while it shall be the Bank's endeavour to retain / re-skill staff and to develop in-house competencies they may outsource IT and related activities in respect of specialized areas where in-house capability is not available. Clause-31(G) states that Banks may adopt new systems and procedures which are demanded / facilitated by latest technology solutions such as networking of branches and centralized accounting, shared operations centres, call centres, processing centres, acting on electronically communicated messages, dependence on digital / electronic signatures and the like. According to the counsel for the Respondent a conjoined reading of the two sub-clauses would show that nothing prevents the bank from outsourcing IT and related activities. The argument that is advanced is that the functions that are sought to be outsourced are IT related activities which are permitted by sub-clauses of Clause-31. The very case of the Respondent that the functions carried out at CTS Grid are IT related activities is not admitted by the petitioner. It is pointed out on behalf of the petitioner that the work has nothing to do with IT. On an examination of the work that is done it could be seen that it could not be considered as an IT related work. The work done at the CTC Grid is a manual one. The only thing is that entry is made in the system. So also receipt of data at the grid also is through computer. Rather than examining the original cheque itself as was done earlier, the practice at present is to examine the image of the cheque which is received at the Grid. If earlier the original instrument itself was examined, at present the image (copy) received by scanning and transmission is examined. This cannot be considered as an IT related work. Even assuming that it is an IT related work, what is the position? Clause-31-h of the 8th Bipartite Settlement regarding outsourcing of IT and related activities runs with a rider that it can be done only in respect of specialized areas where in-house capability is not available. The clause states that the Bank should endeavour to retain / re-skill the staff and to develop in-house competencies for such work. The Respondent has no case that in-house competency is not available for the work. On the other hand what is stated in the Counter Statement is that the expression "in-house capability" in the clause is to be construed to mean the constraints faced by banks owing to lack of willing employees for attending to CTS duties continuously and on regular basis. Certainly, such an interpretation cannot be given to the terms at all. What is intended is that if persons are available among the staff to do the particular IT and related activity, it should not be outsourced. Thus, it is clear from the sub-clause that only when special expertise is required for some IT and related activity it should be outsourced. There is no necessity to read Sub-Clause (G) of Clause-31 which provides for adopting new systems and procedures demanded by latest technology solutions alongwith Sub-Clause (h). Adopting new systems and procedures does not mean outsourcing except as provided by a Sub-Clause (h). Thus, it could be seen that in any case the action of the Respondent is in violation of Clause-3-h of the 8th Bipartite Settlement. As pointed out by the counsel for the petitioner, non-compliance with the relevant clause in the 8th Bipartite Settlement is an unfair labour practice. Item-13 of 5th Schedule of the Industrial Disputes Act states that failure to implement award, settlement or agreement is an unfair labour practice. It is in violation of the Bipartite Settlement the Respondent has resorted to outsourcing.

15. One contention that has been raised on behalf of the Respondent is that staff is not available to do the work. The Counter Statement states that immediately after the CTS Grid system was introduced the employees were asked to opt for the same but only 17 clerical staff opted and an average only 12 turned up also. MW1 has also given evidence regarding this. However, it has come out during cross-examination of MW1 that if option was given properly and in time staff would have been available. MW1 has stated during her cross-examination that the last time option was called from the clerical staff to work in CTS Grid Centre was in 2012 and that also only from those working within Chennai Circle Branches. There is no doubt that if option was given to those working outside Chennai also there would be persons available to grab the opportunity to work within the Metropolitan City which is more attractive in several ways. In the absence of any such option having been given the lamentation of the Respondent that staff are not willing to work in CTS Grid Centres could not be accepted.

16. Another contention for the Respondent that the fact that the Grid Centre is having only 7 holidays while the employees are entitled to 14 holidays a year creates problem also could not be accepted. It is stated by the petitioner that this problem has already been solved by the Respondent by suitable action. It is pointed out that the Respondent has issued circular dated 02.05.2013 providing for devices such as blockage and holiday marking function in CTS system to remedy the situation.

17. The claim of the Respondent that better service will be available at CTS Grid Centre through outsourcing also could not be accepted. The contention is that since less number of persons are working in the Grid errors are bound to creep in especially when there is no provision for recovering the amount from the concerned employees. So also it is stated that there would be anxiety for the employees when they are given night duty on regular holidays. The very Bipartite Settlement states that in-house capabilities are to be developed. As could be seen the employees of the Respondent have been doing the work at CTS Grid Centre from the very inception. Contract Labours through outsourcing agencies who will be replacing the regular staff could not be expected to be in the knowhow of things, to have the capacity to do the work in a more methodical and perfect manner than regular employees. There is always the

possibility of the contract employees being replaced frequently and this will affect the smoothness of the work also. So the contention that the system will work better at the hands of an outsourcing agency could not be accepted.

18. There is also a contention for the petitioner that Section-9A of the ID Act is violated in the absence of any notice having been given before implementing the outsourcing. The counsel for the Respondent has argued that there is only a proposal to outsource the work and it is not yet implemented and therefore there is no question of violation of Section-9A of the Act. However, as pointed out by the petitioner the Respondent has called tenders from outsourcing agencies that are willing to do the work. Ext.W3 is the copy of the tender. That means steps are already taken to implement the decision of outsourcing and it is not a mere proposal. The counsel has referred to the 4th Schedule of the Act enumerating the conditions of service for change of which notice should be given under Section-9A of the Act. According to the counsel for the petitioner Items-3, 8 and 11 of the Schedule are attracted to the case. Item-3 refers to compensatory and other allowances. For those who are working at the Grid such allowances are payable which according to the counsel will be denied if they are removed from the Grid Centre. Item-8 states that for withdrawal of any customary concession or privilege or change in usage notice is required. I do not think this item is attracted to the case as it could not be termed as a customary concession or privilege. In any case Item-11 will be directly attracted to the case. This states that any increase or reduction in the number of persons employed or to be employed in any occupation or process or department or shift also requires notices under Section-9A. Certainly, there would be reduction in the number of persons employed when outsourcing is resorted to. 30 persons are required for working in the grid. On resorting to outsourcing there will be corresponding reduction in the number of the staff. Though any of them would not personally be affected, the workman as a class will be affected in the sense that there would be reduction in the number of persons working consequent to deploying of persons through outsourcing agency. So notice should have been given under Section-9A of the Act before resorting to outsourcing, in any case.

19. Lastly, there is a contention for the Respondent in its Counter Statement that the Petitioner Union having only 7.6% of the membership of the workmen it has no *locus-standi* to raise the dispute. The counsel for the Respondent has referred to the decision in SIVASUBRAMANIAM AND ANOTHER VS. STATE OF MADRAS reported in 1968 2 LLJ 89 in this respect. It was held here that the dispute should be sponsored by a considerable number of workers of the establishment, that there should be community of interest between the workers or the Union representing them and the employees whose dispute is sponsored by them and that the majority or a large section of the workmen employed in the particular industry should back the stranger union. Reference was also made to the MANAGEMENT OF MADURA MILLS COMPANY LIMITED Vs. THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, MADRAS AND ANOTHER reported in 1973 2 LLJ 341. Here it is held that the dispute was an Industrial Dispute as the majority of the employees were behind the dispute. The argument on behalf of the Respondent is that the petitioner having 7.6% workmen only being behind them, it is not a Union having support of majority of workers or even a substantial number of the workmen and therefore it has no *locus-standi* to raise the dispute. The counsel for the petitioner has referred to the case of WORKMAN OF INDIAN EXPRESS NEWSPAPERS PVT. LTD. where the Apex Court has held that there will be necessary representative capacity for the Union of which 25% of the members are working in the establishment and it has the capacity to espouse the cause of the two concerned employees. It is settled position of law that even a minority union can espouse the cause of the workmen. The petitioner which is having the backing of 7.6% of the employees of the Respondent have got the representative capacity to raise the dispute.

20. During argument the counsel for the Respondent has advanced a contention that there is no resolution by the General Body of the Union to espouse the cause and for this reason also the dispute is not maintainable. However, such a contention not having been raised in the Counter Statement it should be rejected.

21. It is clear from the above discussion that the Respondent has not acted properly in deciding to resort to outsourcing the CTS Grid Centre function at Chennai. So the petitioner is entitled to the relief claimed.

Accordingly, an award is passed as below:

The Respondent Management shall not outsource the functions including the data capture works relating to clearing instruments at CTS Grid, Chennai to outside agencies. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this the 22nd July, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri N. Rajagopal

For the 2nd Party/Respondent : MW1, Mrs. N.S. Prasanna

Documents Marked:**On the Petitioner's side**

Ext.No.	Date	Description
Ext.W1	02.05.2013	Canara Bank Head Office Circular 204/2013 regarding CTS Grid Operations
Ext.W2	04.02.2014	Document produced by the management before the Conciliation Officer, ALC (C), Chennai regarding workflow, before and after introduction of cheque truncation system
Ext.W3	25.04.2013	True copy of tender reference no. RFP-CTS01/2013-14 issued by the Management
Ext.W4	26.05.2005	Extracts from 8 th Bipartite settlement dated 02.06.2005, Clause-31 on computerization/mechanization and technological upgradation, specifically 31-h – (Canara Bank HO Circular 151/2005, Clause 30)
Ext.W5	01.06.2013	Letter addressed to the Chairman and Managing Director, Canara Bank, Head Office, Bangalore by Pradeep Biswas, General Secretary, Bank Employees Federation of India against outsourcing of CTS related work at Chennai Grid of Canara Bank
Ext.W6	07.10.2013	True copy of representation addressed to the Assistant Labour Commissioner (Central), Chennai by the Union
Ext.W7	19.12.2013	Letter addressed to the General Manager, IR Section Canara Bank, Head Office, Bangalore by KP Sethumadhavan, General Secretary, Canara Bank Staff Union urging the management to initiate negotiations on outsourcing of CTS Grid Chennai Operations, as suggested by the Conciliation Officer, ALC (C), Chennai

On the Management's side

Ext.No.	Date	Description
Ext.M1	03.11.2006	RBI Circular No. RBI/2006-167 – Guidelines on “Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks”
Ext.M2	28.08.2006	Circular No. 432/2013 – adoption of uniform holiday calendar under Cheque Truncation System (CTS)
Ext.M3	07.10.2013	Dispute raised by Canara Bank Staff Union before the ALC (Central), Chennai
Ext.M4	11.11.2013	Respondent's reply to ALC (Central), Chennai
Ext.M5	04.12.2013	Rejoinder by petitioner to the reply of the Respondent
Ext.M6	10.03.2014	Conciliation Failure Report
Ext.M7	2012-2013	Outsourcing Risk Management Policy
Ext.M8	August 2014 Sept. 2014 August 2015 Sept., 2015	Statement of errors and rejection of cheques at CTS, Grid, Chennai
Ext.M9	-	Manual and Procedures and Guidelines for CTS at Chennai Bankers' Clearing House.

नई दिल्ली, 6 अक्टूबर, 2016

का.आ. 2097.—जबकि मैसर्स फोर्ब्स एण्ड कम्पनी लिमिटेड (बांद्रा क्षेत्र में कोड संख्या एमएच/3948 के अंतर्गत) (एतदुपरांत प्रतिष्ठान के रूप में संदर्भित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (एतदुपरांत अधिनियम के रूप में संदर्भित) की धारा 17 की उप-धारा (1) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्रीय सरकार के विचार में, अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में विनिर्दिष्ट नियमों की तुलना में कर्मचारियों के लिए कम उपयुक्त नहीं हैं और कर्मचारी उक्त अधिनियम अथवा कर्मचारी भविष्य निधि योजना, 1952 (एतदुपरांत योजना के रूप में संदर्भित) के अंतर्गत सदृश स्वरूप के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में दी जाने वाली अन्य भविष्य निधि प्रसुविधाओं का भी लाभ उठा रहे हैं।

3. अतः केन्द्रीय सरकार, अब उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त षष्ठियों का प्रयोग करते हुए इस संबंध में समय-समय पर विनिर्दिष्ट शर्तों के अध्यधीन, उक्त प्रतिष्ठान को अगली अधिसूचना तक 14.08.1997 से उक्त योजना के सभी उपबंधों से छूट प्रदान करती है।

[सं. एस-35015/3/2016-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, "नियोक्ता" से:-

- (i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और
- (ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय-समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा।

3. अधिनियम की धारा 2(च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहें हैं, यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्हीं देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7 थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डैकैती, गवन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंघ्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया

गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लंबित रहते उन पर स्वतः लागू किया जाएगा।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाएं जाएंगे।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानतः इलैक्ट्रॉनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छः माह के भीतर प्रत्येक कर्मचारी को निःशुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटऑफ नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दापिङ्क कार्रवाई के भागी होंगे।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रूप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा।

18. (क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय व्यय माना जाए। प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा।

19. प्रतिभूतियों और बाणों की खरीद जैसे ऐसे सभी निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे। स्थापना की बंदी या परिसमाप्तन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के, अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों(भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिनके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए

गए निवेश अर्थात् प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं। तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की विक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्ताधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में ढाले जाएं।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशितों पर उनके साथ-साथ बाध्यकारी होगा।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने की स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा। यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा।

24. (क) न्यासी बोर्ड द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्ताधीन होगा। जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे।

(ख) एक ही लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए। तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबंधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त न किया जाए।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड(क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबंधित व्यक्ति को इस संबंध में कारण बताओ नोटिस जारी करने के बाद रद्द कर दी जाएगी।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुए किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा।

29. किसी विलय, अविलय, अभिग्रहण, विक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णतः स्वामित्व वाली हो या नहीं इत्यादि के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए।

30. एक ही भविष्य निधि ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाईयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से एवं अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. छूट प्राप्त न्यास निधि के अधिग्रहण के मामले में, अंतरीय ब्याज के कारण हानि के अनुमानित निवल वर्तमान मूल्य की वसूली प्रतिष्ठान से की जानी चाहिए।

32. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे।

New Delhi, the 6th October, 2016

S.O. 2097.—Whereas M/s Forbes and Company Limited [under Code No. MH/3948 in Bandra region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 14.08.1997 until further notification.

[No. S-35015/3/2016-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Fund Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean:-

- (i) In relation to an establishment, which is a factory, the owner or occupier of the factory: and
- (ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner(CPFC) or an officer authorized by him.

3. All employees' as defined in section 2(f) of the act, who have been eligible to become members of the Provident Fund' had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues towards the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Fund Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving

service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. In case of takeover of the exempted Trust Fund, estimated net present value of the loss due to differential interest should be recovered from the establishment.

32. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.